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ABSTRACT

The objective of the study was to identify and analyze practices and procedures, rules and regulations, and public laws which hinder or prevent inmate training and postrelease employment and to recommend necessary modifications. Members of the project staff reviewed the literature on the subject and sought information and advice from consultants in New York, Maine, and other States. Visits were made to 10 correctional institutions in New York and Maine, and interviews were held with parole officers, corrections personnel, inmates, and ex-inmates. Research of legislation was conducted in both States, and surveys were made of policies and practices of State licensing and certification boards and major private employers. Sixty-six recommendations were made in the areas of institutional operation, training programs, employment, parole, and after care. Many of the recommendations are directed specifically at the States of New York and Maine, but other States with equivalent restrictions on the employment and treatment of offenders will find them applicable. (Author)

# The Invisible Prison

## An Analysis of Barriers to Inmate Training and Post-Release Employment in New York and Maine

Report for the New York State Education Department, Division of Special Occupational Services, and the U.S. Office of Education, Division of Manpower Development and Training

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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RCA Institutes, Inc., 320 West 31st Street, New York, N.Y.

# THE INVISIBLE PRISON

An Analysis of Barriers to Inmate Training and Post-Release Employment in New York and Maine

Submitted by

R C A Institutes, Inc.
320 West 31st Street
New York, N.Y.

March 31, 1972

This study was performed pursuant to contract 1-TAT-1, Correctional Study for the New York State Education Department, Division of Special Occupational Services, funded through the United States Department of Health, Education, and Welfare, Office of Education, Division of Manpower Development and Training. No official endorsement of the report by RCA Corporation or the sponsoring public agencies should be inferred.

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## PREFACE

This study was initiated by the New York State Education Department, Division of Special Occupational Services, and the United States Department of Health, Education, and Welfare, Office of Education, Division of Manpower Development and Training, as a means of identifying barriers to training and employment for inmates and ex-inmates of the correctional system. The study was assigned to RCA Institutes, Inc., because of its long and successful involvement in vocational training and manpower development and was conducted with the cooperation of the Department of Correctional Services in the State of New York and the Bureau of Corrections, Department of Mental Health and Corrections, in Maine. The report and recommendations reflect the conclusions of the project staff, and no official endorsement by RCA Corporation or the sponsoring public agencies should be inferred.

The objective of the study was to identify and analyze practices and procedures, rules and regulations, and public laws which hinder or prevent inmate training and post-release employment and to recommend necessary modifications. Members of the project staff reviewed the voluminous literature on the subject (articles, books, reports, and other documents actually utilized in the report are included in the bibliography), and sought information and advice from consultants in New

York, Maine, and other states (resource persons are listed in Appendix C). Visits were made to ten correctional institutions in New York and Maine, and interviews were held with superintendents, directors of education, correctional counselors, training instructors, shop supervisors, parole officers, correctional officers, inmates, and ex-inmates. Research of legislation was conducted in both states, and surveys were made of policies and practices of state licensing and certification boards and major private employers.

The project staff wishes to acknowledge especially the cooperation and assistance of Dr. Howard A. Matthews, Director, Division of Manpower Development and Training, United States Department of Health, Education, and Welfare, and Dr. John M. Leslie, Director, Division of Special Occupational Services, New York State Department of Education, and of personnel in the Office of Vocational-Technical Education Projects, Educational Testing Service; the Program in Law/Justice Studies, Glassboro State College; the Fortune Society of New York City; the Office of Manpower Research and the Manpower Administration, U.S. Department of Labor; the Law Enforcement Assistance Administration, U. S. Department of Justice; the New York Urban Coalition; and the American Bar Association Committee on Correctional Facilities and Services, and the Federal Bureau of Prisons, as well as the State correctional agencies and institutions in New York and Maine.

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# SUMMARY AND RECOMMENDATIONS*

## I. Introduction

With every new study of crime in America, it becomes increasingly clear that a person who is once convicted of a criminal offense, regardless of the nature of the offense or the causes for it, is not likely ever to escape the destructive and self-desolating ethos of criminal activity. The offender may move through a succession of identifiable stages, from arrest to rehabilitation, but he is likely to remain forever in an invisible prison--eventually given his physical freedom but denied access to normal and non-criminal patterns of life. Each time he emerges from the visible walls of the correctional institution, he will face the prospect of a dismal half-life on the edges of society, continually confronting barriers erected to prevent his integration into the community of free men. Unable to penetrate or often even to identify those barriers, he will likely be reduced to an

*NOTE: This summary parallels the text of the full report. The recommendations, therefore, appear in the order in which they occur in the report, not in order of priority. At the end of each recommendation, reference is made to the page on which it may be found in the full report; in each case, discussion of the rationale for the recommendation precedes it in the report.

endless repetition of the cycle of arrest, conviction, incarceration, and release.

Employment is only one aspect of the problem faced by the released inmate, but it is an area in which a bewildering array of barriers has been erected to exclude him from participation. In some instances, the barriers are the result of thoughtless bias; in others, they are the result of direct and intentional discrimination; in still others, they are the result of reasonable standards of qualification and skill development which the inmate has no opportunity to achieve. Employment, however, is more than simply a fringe benefit to freedom for the ex-inmate; it can be a critical factor in his ability to break out of the syndrome of criminal activity and an essential element in his rehabilitation. Barriers to training and employment can prevent implementation of the public policy of rehabilitating offenders and thwart the best efforts of the correctional system.

The lack of employment is not exclusively the problem which leads to criminal acts, of course, and training and education and wider employment opportunities are therefore not fully the answer to the problem of crime and rehabilitation, they are part of a larger system which requires examination. The initial recommendation reflects the conviction that the success of adjustments in training and employment is dependent on more general adjustments throughout the correctional system.

Recommendation 1. Statewide committees should be established in New York and Maine to examine the total system of rehabilitation for persons convicted of criminal offenses, including pre-commitment and post-release services, institutional care and treatment, and alternative community-based programs. We further recommend that the composition of such committees be widely representative of the public which must support changes in the system, of those who operate the system in a variety of capacities, and of those who either now or have been its inmates (p. 8).

## II. The Institutional Setting

The current setting of the correctional program, often in massive and remote institutions, is not conducive to effective rehabilitation in general or to training and employment programs in particular, and nearly every study of corrections has recommended the development of smaller facilities nearer to population and employment centers. States have a considerable investment in current institutions, however, and the transition to smaller urban units cannot be accomplished quickly; recommendations are therefore made for feasible modifications of existing institutions. The report also recommends that a range of security classifications among institutions and among individual units of each institution be developed, and that state and local facilities be coordinated more effectively in order to increase the range of types of institutions and of locales available for correctional programs.

In most correctional centers, institutional procedures consume an inordinate share of inmate time which could be devoted to rehabilitative programs. Processing a new admission can require as much as two to four months of his term of confinement and consists at best

of a duplication of evaluations already made in specialized reception centers; at worst, the inmate simply waits during that time for a brief and superficial examination of his record before being allowed to begin a program. Daily schedules also restrict the time available for training, often allowing only five hours per day for instruction and work programs--time which must be used also for such activities as showers, haircuts, family visits, counseling, sick call, and trips to the commissary. Disciplinary measures, obviously necessary for control and maintenance of an orderly environment, also disrupt training programs, often unnecessarily, by blanket provisions for immediate cell confinement for anyone charged with any violation of rules, no matter how minor, until the meeting of the disciplinary board and by non-standardized and sometimes excessive penalties.

Perhaps the greatest single difficulty in establishing and maintaining a corrective program is insufficient staffing. Correctional programs and institutions are understaffed in almost every category, and the ratio of educational and counseling personnel to inmates is particularly unfavorable. More efficient utilization of available personnel resources can be achieved by better coordination of the traditionally separated parole and institutional counseling staffs, by upgrading job classifications of correctional officers and involving them in rehabilitation programs, and by training and employing inmates, ex-inmates, volunteers, and para-professionals. In modifying

current personnel practices, special attention should be given to the need for involvement of persons representative of the ethnic and cultural background of inmates.

<u>Recommendation 2.</u> Emphasis in future planning should be placed on the provision of small institutions near metropolitan areas which offer greater supportive resources and opportunities for rehabilitative programs (p. 12).

<u>Recommendation 3.</u> An examination should be made of each existing institution to determine the feasibility of creating residential and program clusters to provide each inmate with identity in a group smaller than the total population of the institution (p. 12).

<u>Recommendation 4.</u> High priority should be given 1) to the classification of institutions and of units within institutions by degree of security as well as by the nature of rehabilitative programs and services and 2) to the development of non-security institutions or units in institutions (p. 15).

<u>Recommendation 5.</u> Examination should be made of the feasibility of coordination and supervision at the state level of all correctional and custodial facilities for adult offenders throughout the states of New York and Maine (p. 18).

<u>Recommendation 6.</u> An information system should be established to enable the reception centers to coordinate the assignment of inmates to institutions with the availability of vacancies in appropriate programs and, as a matter of course, the recommendation of the reception center should be followed at the institution and the recommended program initiated after a brief orientation to the institution (pp. 21-22).

<u>Recommendation 7.</u> The daily schedule of each institution should be redesigned to accommodate an eight-hour work day, recognizing that the day might reasonably be divided into smaller units more conducive to instructional and learning activities in some programs (p. 24).

<u>Recommendation 8.</u> Disciplinary procedures should be examined at each institution with regard to their relationship to training and other rehabilitative programs and they should be modified to complement rather than compete with those programs (p. 25).

Recommendation 9. Highest priority should be given to the provision of funds for additional staffing of correctional institutions, with particular emphasis on education, training, counseling, and related services (p. 28).

Recommendation 10. Steps should be taken to provide information to the staff of each institution on the experience of inmates released from the institution (p. 29).

Recommendation 11. Members of the instructional staff in vocational areas should be encouraged to develop contacts with persons actively engaged in relevant businesses and trades and time and travel expenses should be provided for such instructors to visit potential employers of inmates in their vocational area (p. 29).

Recommendation 12. Money and time should be provided for members of the educational, training, and counseling staffs of all institutions in each respective state to meet regularly together for discussion of mutual problems and concerns (p. 29).

Recommendation 13. The merger of corrections and parole at the state level in New York should be implemented also at the institutional level in order to facilitate the development of a continuous program of rehabilitation, in order to provide a natural conduit for information and ideas in both directions through the rehabilitative process, and in order to make maximum use of personnel currently available for counseling services in institutions (pp. 32-33).

Recommendation 14. High priority should be given 1) to developing training programs for correctional officers and guards to enable them to participate in the rehabilitation programs of the institution, 2) to redesigning job classifications and wage scales to allow for appropriate recognition for officers participating in such programs, and 3) to organizing collaborative staff teams to serve inmates and to reduce the isolation of correctional officers from the full rehabilitation programs of the institution (p. 36).

Recommendation 15. Rules and regulations in the correctional divisions at the state level in New York and Maine and in institutions in both states should be purged of all blanket prohibitions against the employment or other utilization of inmates or ex-inmates (p. 41).

Recommendation 16. Steps should be taken to increase the training and employment of inmates as aides to the professional staff of institutions for orientation, counseling, education, and vocational training programs (p. 42).

Recommendation 17. An affirmative-action plan should be adopted at the state and institutional levels for the recruitment, training, and employment of former inmates in the correctional system, including those on parole or eligible for parole (p. 42).

Recommendation 18. Steps should be taken to develop programs in correctional institutions to recruit and train para-professional and non-professional people from the community as employees and as volunteers (p. 43).

Recommendation 19. Highest priority should be given to the employment of minority personnel at all levels of the correctional staff, in non-professional, para-professional, and professional positions (p. 46).

Recommendation 20. Minority inmates should be assigned to institutions in which programs and services oriented to their needs can be provided, until such time as the resources of the system allow for the provision of such programs and services in all institutions (p. 46).

Recommendation 21. Job descriptions should be established which would require minority attributes for certain positions in the correctional program (p. 46).

## III. Training Programs

Training and work programs necessarily take a variety of forms in the correctional institution; too often, however, because of limited budget resources for corrections, these programs must conform more to the needs of the institution than to the needs of the inmate. Maintenance and industrial programs are essential in the correctional system, but modifications in such programs can make them more relevant to the rehabilitation of inmates, the central purpose of the system. A year-round schedule of individualized instruction and learning, rather than the current ten-month program of group instruction, can also strengthen the correctional program, given the random nature of entry into the system by inmates. Further, learning and work experience can be correlated more closely with the actual working conditions and standards outside the institution for which inmates are being prepared.

Incentives for training and rehabilitation are reviewed in the report and greater utilization of incentives currently available in correctional institutions is recommended, incentives such as leisure time and activities, residential conditions, "outside" activities and

assignments, and reduction of sentence time. It is also recommended that measurable objectives be set as goals for inmates, where appropriate, and that achievement and attitude testing be implemented as a means of judging progress toward those goals. With regard to wages, recommendations are made for the introduction of industry-based programs to provide wages on a scale equivalent to that prevailing in the community and for similarly equitable wages for inmates assigned to other training, work, or educational programs.

In reviewing constitutional and legal rights of inmates in correctional institutions, the report concludes that the protection of these rights, whether or not required by the courts, would also protect training programs and protect the interest of the public in the rehabilitation of offenders. Decisions on the assignment of inmates to training programs or on their removal from such programs for disciplinary or administrative reasons, by confinement or by transfer to other institutions, can have significant damaging impact on both the inmate and the program.

Recommendation 22. Institutions should offer a wider range of vocational training programs with enrollment capacities equal to the training needs identified by the reception centers (p. 55).

Recommendation 23. Institutions should be enabled to purchase maintenance services when necessary, in order to utilize inmate labor only on the basis of available skills and interests or as a legitimate function of the rehabilitation program (p. 55).

Recommendation 24. State-use industries should be re-examined for their relevance to the program of rehabilitation in the correction system and the industries should be re-designed to complement this program, providing on-the-job experience in work directly related to available training courses and providing an environment reflecting contemporary industrial standards in order to facilitate the transition of released inmates from prison training to stable industrial employment (p. 58).

Recommendation 25. Year-round operations should be adopted for training and education programs in correctional institutions (p. 60).

Recommendation 26. Individualized instruction should be adopted in vocational training wherever possible to allow for random entry and self-paced progress through a series of small, achievable units of increasingly sophisticated skill levels in each career field (p. 62).

Recommendation 27. Vocational training instructors should be informed of and involved as much as possible in the process of job development, placement, and job-related post-release services as a means of maintaining contact with the career fields for which they give preparation (p. 64).

Recommendation 28. High priority should be given to the establishment of trade advisory committees with representatives of management and labor to set standards for and evaluate vocational training programs, to identify employment opportunities, and to foster public understanding of and support for rehabilitation programs in the correctional institutions (p. 66).

Recommendation 29. State apprenticeship councils in Maine and New York should be utilized by the correction system in each state 1) to develop training programs and establish appropriate performance standards in work programs which will meet certification requirements and 2) to serve as a liaison between correctional institutions and employers offering apprenticeship programs (p. 68).

Recommendation 30. Officials of the correction systems in New York and Maine should begin discussions with private industry and employers with regard to mutually beneficial programs to improve the training and rehabilitation of inmates (p. 69).

Recommendation 31. High priority should be given to the development of a range of community-based programs to facilitate the rehabilitation of offenders and their adjustment to society (p. 73).

Recommendation 32. Existing incentives in the correctional institutions--incentives such as leisure activity opportunities, residential conditions, "outside" activities, "good time"--should be reviewed and utilized more directly for training programs related to rehabilitation (p. 78).

Recommendation 33. Correctional institutions in New York and Maine should initiate a program of achievement and attitude testing to facilitate evaluation and planning in the rehabilitation program and to assist inmates in overcoming negative biases among potential employers (p. 78).

Recommendation 34. Specific measurable objectives should be established for those inmates for whom skill development is deemed appropriate in the reception center diagnostic evaluation, and progress toward release and toward other incentives short of release should be related directly to progress toward the skill objective (p. 78).

Recommendation 35. High priority should be given to the development of industry-based training programs in the correctional institutions of New York and Maine which will 1) provide goods and services to the state, 2) provide adequate wages for inmates and income to the system for continuing programs, and 3) provide employment-oriented work experience and training (p. 84).

Recommendation 36. Wages prevailing in revised industrial training programs should be applied also to educational and other training programs so that inmates are not penalized financially by assignments considered most appropriate for their rehabilitation (p. 84).

Recommendation 37. Highest priority should be given in the state of Maine to the provision of wages to inmates for work done and skills learned, 1) as an incentive to learn and produce, 2) as reinforcement for the development in each inmate of a perception of the dignity of work and of himself, and 3) as fair compensation from the society which benefits from the goods and services produced and, in the long run, from the skills learned (p. 84).

Recommendation 38. The novelty system at Maine State Prison should be carefully evaluated for its relationship to the rehabilitative purposes of the institution and formal instructional support should be given to those aspects of creativity or financial management which have a positive bearing on the preparation of inmates for a return to a productive life in free society (p. 84).

Recommendation 39. Regular reports should be made to inmates on wages earned, on progress toward program goals, on "good time" awarded or denied, and on general performance and conduct, with explanations for any unusual positive or negative factors in the report (p. 85).

Recommendation 40. Disciplinary, classification, and other hearings and reviews which affect an inmate's opportunities for training should be conducted in a manner consistent with principles of due process, both as protection for the inmate and as protection of the public's legitimate interest in his rehabilitation (p. 91).

Recommendation 41. Regulations which restrict the receiving and sending of material related to employment opportunities should be cancelled (p. 91).

## IV. Employment

A major inconsistency in state programs to rehabilitate offenders and a major barrier to the success of those programs is the exclusion of ex-inmates from licenses and certificates required for practice in many occupations. Legislative authorizations, applications, and procedures for licensing and certification in New York and Maine are not always consonant with State policy regarding the rehabilitation of offenders. Through a variety of devices related to vague character requirements and often irrelevant competitive criteria, ex-inmates are directly or indirectly excluded from an increasingly broad range of occupations. The report recommends that licensing and employment disabilities be limited to those occupations directly related to the offense for which the inmate or ex-inmate was convicted and that correctional agencies be enabled to certify rehabilitation of the offender by removing disabilities at any time after expiration of the minimum sentence imposed by the court. It also recommends that extension of disabilities beyond expiration of the maximum sentence be allowed only with the approval of the court. The use of information concerning arrests not followed by conviction should be prohibited by legislative

action as unwarranted discrimination against innocent persons and as a circumvention of laws restricting the use of information concerning juvenile convictions.

The recommendation of legislation to protect ex-inmates against arbitrary and unreasonable discrimination--that is, to leave to the courts and the correctional agencies the application of penalties for criminal offenses--is a major recommendation of the report. Only by restricting the right of licensing boards and of public and private employers to discriminate against ex-inmates without justifiable cause can the state significantly improve the operation of its correctional system. At present, neither the correctional agency nor the rehabilitated offender has any recourse to legal review of decisions which deny employment or licensure by reason of past criminal conviction and which thereby negate the entire rehabilitation effort.

With regard to private employment and labor union membership, discrimination against ex-offenders is informal and, for the most part, not stated in policies or regulations. Only through specific legislative action can the rights of rehabilitated ex-inmates be guaranteed and the success of the correctional system be improved. Along with a recommendation to this effect, however, the report recommends more positive steps to involve private employers and unions in the

correctional program to increase their understanding of the goals and needs of ex-inmates.

Recommendation 42. Legislation should be enacted in the States of New York and Maine 1) to prevent employers and licensing boards from asking for or acting on information concerning arrests not followed by conviction and 2) to restrain state agencies from releasing information concerning arrests not followed by conviction (p. 106).

Recommendation 43. Legislation should be enacted in New York and Maine 1) to make explicit the automatic restoration of civil rights and the removal of all civil disabilities for convicted persons upon expiration of the maximum sentence imposed at the time of conviction unless there is court action to extend the period of disabilities and 2) to make restoration of rights or removal of disabilities, in whole or in part, optional for convicted persons at the discretion of the respective state correctional agencies at any time after completion of the minimum sentence imposed at the time of conviction (p. 116).

Recommendation 44. Existing licensing legislation in New York and Maine which provides for blanket exclusions of persons convicted of criminal offenses should be amended to provide for 1) exclusion of persons whose criminal conviction demonstrates specific unfitness directly related to the occupation for which a license is sought, 2) consideration of the nature and circumstances of the offense and conviction and of evidence of rehabilitation as related to the occupation for which a license is sought, 3) notification to the applicant of the reason for which the license is denied and of the procedure for appeal, and 4) a trial de novo on the merits of the application and decision (pp. 121-122).

Recommendation 45. Urgent consideration should be given to legislation in New York and Maine preventing arbitrary and unreasonable discrimination which is based on criminal convictions not directly related to the opportunity or benefit sought, or on convictions expunged by the courts, and which fails to take into consideration such relevant factors as the nature of the offense and conviction, length of time since the conviction occurred, and evidence of rehabilitation (p. 125).

Recommendation 46. The New York Civil Service Law, Art. 4, Title A, sec. 50.4d and the Maine Personnel Law, Chapter 63, RS 1954 as amended, rule 6.4d, should be amended to provide for exclusion from

examination or refusal to certify only those persons whose criminal record renders them demonstrably unfit for the particular position sought (p. 130).

Recommendation 47. Guidelines of the United States Civil Service Commission for evaluation of conviction records to determine fitness for public employment should be adopted as standards for similar evaluation in the states of New York and Maine (p. 130).

Recommendation 48. Legislation advocated in Recommendation 42, prohibiting public employers and licensing boards from asking for or acting on information regarding arrests not followed by conviction, should be extended explicitly to regulate employment practices by private employers authorized to conduct business in the states of New York and Maine (p. 133).

Recommendation 49. Legislation should be enacted in New York and Maine prohibiting employment referral agencies from asking for or acting on information regarding arrests not followed by conviction (p. 134).

Recommendation 50. Officials of the correction systems in Maine and New York, through individual contact or formal working conferences, should communicate to officers responsible for corporate social concerns the goals and needs of the state's rehabilitative programs and enlist the aid of these officers in utilizing corporate hiring capabilities in reducing criminal recidivism and in preventing further acts of crime (p. 137).

Recommendation 51. Personnel and employment officers of private corporations and of employment referral agencies should be asked to serve on committees to advise the correction agencies on job placement services for inmates, to assist in identifying employment opportunities, and to foster increased understanding of and support for rehabilitation programs in correctional institutions (p. 137).

Recommendation 52. Legislation proposed in Recommendation 45 should be extended explicitly to prohibit arbitrary and unreasonable discrimination by private employers which is based on criminal convictions not directly related to the opportunity sought (p. 140).

Recommendation 53. Legislation proposed in Recommendation 45 should be extended explicitly to prohibit arbitrary and unreasonable discrimination by employment referral agencies and by insurance

or bonding underwriters which is based on criminal convictions not directly related to the benefit sought (p. 140).

Recommendation 54. Legislation proposed in Recommendation 45 prohibiting arbitrary and unreasonable discrimination based on criminal convictions not directly related to the opportunity or benefit sought should be extended explicitly to be applicable to membership or other requirements of labor unions or other organizations which may be prerequisites to employment (p. 144).

Recommendation 55. Representatives of labor unions should be requested to serve on advisory committees related to the job placement of rehabilitated inmates, as proposed in Recommendation 51 (p. 145).

Recommendation 56. Officials of the correctional agencies in New York and Maine should initiate discussions with the Human Resources Development Institute of the AFL-CIO and with other social-concern departments of labor unions with regard to potential supportive and cooperative programs and services (p. 145).

## V. Parole and Aftercare

The time immediately following release from the institution is a critical time of adjustment for rehabilitated inmates, yet there is little support available in this transitional period. In addition to recommendations for increasing the staff of parole agencies, the report offers recommendations for greater involvement of other community resources, including para-professionals, volunteers, parolees and other ex-inmates in mutually supportive roles, and private agencies with expertise in job placement and counseling. Recommendations are also included for utilizing the related public services of unemployment insurance and welfare and for increasing the capacity of the correctional agencies to assist the inmate after his release from the institution.

Some procedures and practices of parole agencies can actually operate to the detriment of the system. The temporary or permanent revocation of parole is of particular concern; its almost casual occurrence not only damages the rehabilitation of offenders but also weakens the confidence of potential employers in the employment stability of offenders. Parolees may be returned to prison to await

a hearing on alleged violations of parole conditions, even for minor technical violations, thus interrupting employment even for those who will ultimately be found innocent. Neither the procedure of automatic recommitment nor the conduct of secret hearings adequately protects the interests of parolees or their employers.

Despite all its flaws and contrary to its general reputation, the correctional system has had some remarkable successes in the rehabilitation of offenders. A public campaign to improve the image of the system and of the rehabilitated offender could do a great deal to remove the stigma of a criminal record which now acts as a barrier to employment and as a barrier to the successful operation of the entire correctional system.

Recommendation 57. High priority should be given 1) to increasing the staff personnel available for parole services, 2) to developing programs to utilize para-professional and volunteer assistance, including ex-inmates, and 3) to utilizing parolees in mutually supportive roles through group counseling and shared work assignments (p. 148).

Recommendation 58. Hearings which may result in the denial or revocation of parole should be conducted in accordance with standards of due process and reasons for denial or revocation should be specified in writing (p. 152).

Recommendation 59. Hearings for revocation of parole should be conducted in locations and at times which will not interrupt the employment of the parolee unnecessarily, and employed parolees should be allowed to continue working until found guilty of violation unless public security requires immediate recommitment to an institution (p. 152).

Recommendation 60. Recommitment for technical violation of parole conditions should be served on an intermittent basis for employed parolees in order not to interrupt employment unless the public security or repeated violations make full-time recommitment necessary (p. 158).

Recommendation 61. Successfully rehabilitated former inmates should be employed in the counseling and supervision of inmates in rehabilitation programs, from the initial assignment of the inmate to the institution through his placement in acceptable employment after release (p. 159).

Recommendation 62. High priority should be given 1) to increasing the staff available for assistance to inmates in job placement and counseling, 2) to improving the professional qualifications of such staff, and 3) to utilizing private professional firms with expertise in job placement, both for guaranteed performance in assisting inmates and for providing training assistance to members of the correctional staff (p. 159).

Recommendation 63. Correctional agencies should seek to qualify deserving inmates for unemployment insurance upon release from the institution by 1) crediting inmates with standard wages for work done in the institution or 2) by obtaining a waiver of the requirement of previous income for those inmates whose application for employment insurance is approved by the correctional agency (p. 161).

Recommendation 64. Regulations and procedures regarding welfare payments to families of inmates should be modified to provide a graduated scale of support for the released inmate, based on his ability to secure employment and on level of income (p. 161).

Recommendation 65. Adequate funds should be provided to correctional agencies for assistance to rehabilitated releasees in the form of loans or grants for such items as application fees, job-related tools and equipment, continued training, or relocation expenses (p. 162).

Recommendation 66. Public-service advertising should be sought to dramatize for the general public in New York and Maine the successes of the state correctional systems and to create public understanding of and appreciation for the goals and needs of both the systems and the inmates (p. 162).

## VI. Conclusion

Some of the recommendations of the report relate to procedures and can be implemented without difficulty; others require additional time for further consideration and development; still others are comprehensive in scope and would be expensive to implement. The rehabilitation of persons who have been convicted of crime, however, is of crucial importance to society, and the cost of improvements to the correctional system, as recommended in this report related to training and employment, will be more than offset by the benefits to society--in terms of actual dollars saved through the reduction of further acts of crime and further incarceration and in terms of human lives enriched, strengthened, and restored to constructive and productive participation in the community.

# THE INVISIBLE PRISON

# I. INTRODUCTION

With reference to the problems faced by persons released from correction systems, the United States Attorney General recently noted that "when a releasee is denied the means of making an honest living, every sentence becomes a life sentence."[1] What is perhaps obscured in his comment is that such a sentence is a continuing penalty, not only for the offender, but for society as well--in the loss of manpower resources, in the inevitable suffering of additional acts of crime, and in requiring an increasing portion of our tax revenue for the custody of persons repeatedly returned to prison.

The cost alone in actual dollars spent to maintain our penal system ought to provide sufficient motivation for a critical examination of its success or failure and for an investment in its improvement. It has been estimated that the penal system costs $1.5 billion annually on the national scale, and the cost of holding an adult felon in prison

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[1] John N. Mitchell, "New Doors, Not Old Walls," Address at the National Conference on Corrections, Williamsburg, Va., 5 December 1971, Mimeographed. (Washington: Department of Justice, 1971), p. 14.

was determined in 1965 to be nearly $2,000.00 per year.[2]

In addition, however, this motivation of fiscal concern is strongly reinforced by a concern for human costs, a concern for those who are affected directly or indirectly by acts of crime and for the inmates affected by the criminal justice system. Hans Zeisel, writing on "Crime and Law and Order," has suggested that this concern be directed toward an attempt to discover the sources of crime in our society--an attempt, he feels, which will necessarily lead to the "two major breeding grounds of mass crime: the primary one, our urban ghettos, and the secondary one, our prisons."[3] On the assumption that it will be easier and less costly to begin with the prisons, he suggests that we first turn our attention to them.

In its 1967 report, The Challenge of Crime in a Free Society, the President's Commission on Law Enforcement and Administration of Justice acknowledged that "experts are increasingly coming to feel that the conditions under which many offenders are handled, particularly in institutions, are often a positive detriment to rehabilitation."[4]

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[2] President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society (Washington: GPO, 1967), p. 161; J. W. Mullen, Jr., "Lawyer Says: 'We're Responsible for These People in Prison,'" Camden (N.J.) Courier-Post, 12 August 1971, p. 47.

[3] Zeisel, "Crime and Law and Order," American Scholar, 40, no. 4 (Autumn 1971), 628-29.

[4] Challenge, p. 159.

Zeisel has stated the case less delicately: "In some never fulfilled hope, we call our prisons penitentiaries and reformatories. Nice names, but what our prisons do to many of their inmates is something quite different. However bad a man is when he enters prison, he will leave it a worse man. Breeding grounds of idleness, of hatred of society, of sexual perversion, prisons weld their inmates ever firmer to the community of criminals."[5]

As an indication of the critical nature of the problem, and of the urgency of the need for solutions, Attorney General Mitchell has predicted that there will be increasing numbers of prisoners in the near future as a result of improved law enforcement and of court reforms which will speed the process of prosecution and commitment.[6] These developments can only exacerbate an already formidable problem, for 95 percent of all offenders are at one time or another released back to society.[7] Unless the results of our efforts at "correction" can be changed, we can expect the illogical but inevitable consequence of increased rates of crime in proportion to the increase in

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[5] Zeisel, p. 528.

[6] Mitchell, p. 4.

[7] Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System, (Washington: GPO 1971), p. 54.

the number of persons required to serve time in our "correctional" institutions.

Prison reform is not new, of course, and it is only fair to note that much of the impetus for the current wave of interest in the matter, as in the past, despite the current public outcries, has come from employees and officials within the system itself--those who are often now criticized for its failures--rather than from the public which has mandated the establishment and maintenance of the system. The President's Task Force on Prisoner Rehabilitation noted in 1970 that perhaps the greatest obstacle to improvement in the correctional system always has been the tendency of much of the public to regard it and treat it as a rug under which to sweep difficult and disagreeable people and problems.[8]

Many other commentators have acknowledged this problem and have complained of the public attitude of "out of sight, out of mind"--out of mind, of course, until events such as the recent wave of disturbances brings the system dramatically into view. The pattern, however, has been one of flashes of reform energy, without any sustained public support for the necessary adjustments. Nowhere

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[8] President's Task Force on Prisoner Rehabilitation, The Criminal Offender--What Should Be Done? (Washington: GPO, 1970), p. 7.

is this more evident than in the recent reminder by the Attorney General that many of our contemporary shibboleths and slogans may be found in the recommendations of the National Congress on Penitentiary and Reformatory Discipline, meeting in Cincinnati more than a century ago--for instance, that the prime goal of prisons is not to punish but to reform, that prison personnel should be better trained, that academic education and vocational training should receive primary emphasis, and that prisoners should be helped to find their way after release.[9] There has been no lack of calls for prison reform in our own time. The executive director of the John Howard Association has reported that, between 1967 and 1971, "four presidential commissions, dozens of legislative reports, and more than five hundred books and articles have pleaded for prison reform, but the system remains immutable as prison concrete, largely because life behind the wall is still a mystery to the public."[10]

A recognition of the all-too-frequent disinterestedness of those who must support prison reform is evident in the final report of the

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[9] Mitchell, "New Doors," p. 2.

[10] Joseph R. Rowan, "Progressive Corrections--A Must, Not a Wish," State Government: The Journal of State Affairs, 44, no. 2 (Spring 1971), 72.

Joint Commission on Correctional Manpower and Training: "The public and their legislatures must understand that there can be no solution to the problem of recidivism as long as harsh laws, huge isolated prisons, token program resources, and discriminatory practices which deprive offenders of employment, education, and other opportunities are tolerated."[11] Unfortunately, these negative factors provide a reasonably accurate description of the correction systems examined in this study.

At the outset, we wish to acknowledge several limitations to this effort to alter, if not totally to dissipate, at lease some of the negative factors. The first limitation is one enunciated in the report of the President's Task Force on Prisoner Rehabilitation: "It is probable that no discussion of corrections makes as much sense as it should because there is available so little precise information about correctional successes and failures . . . Particularly little is known about either the amount or causes of recidivism . . . There is little or no hard information about which offenders repeat and why or, even more to the point, which offenders do not repeat and why."[12] In the absence of such hard information, we have

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[11] Joint Commission, <u>A Time to Act: Final Report</u> (Lebanon, Pa.: Sowers Printing Co., 1969), p. 2.

[12] <u>Criminal Offender</u>, p. 6.

simply assumed that barriers to inmate training and post-release employment have actually operated to the disadvantage of inmates and releasees and to the detriment of efforts at rehabilitation.

We wish also to acknowledge a concept which is implicit in most discussions of the correctional systems, in comments to us by members of the staff at several institutions, and by ex-inmates--that is, that the lack of employment is not exclusively the problem which leads to criminal acts and that training and education are therefore not fully the answer to the problem of crime and rehabilitation; they are simply part of a larger system of factors which requires examination. We have made no attempt in this report to deal with every aspect of corrections. We have been guided in our selection of what to discuss by the criteria of our own experience, by the specifications of the contract for this study, and by concern for courses of action which appear to be immediately feasible.[13]

Nevertheless, we have not always refrained from commenting on other aspects of the system to which training and employment are inextricably related, and we have not hesitated to voice our hopes for conditions and characteristics which may seem utopian and unattainable but are admirable and desirable or even essential.

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[13] Cf. Criminal Offender, p. 6.

Indeed, our initial recommendation reflects our conviction that the success of adjustments in training and employment is dependent on more general adjustments throughout the correctional system.

Recommendation I: that statewide committees be established in New York and Maine to examine the total system of rehabilitation for persons convicted of criminal offenses, including pre-commitment and post-release services, institutional care and treatment, and alternative community-based programs. We further recommend that the composition of such committees be widely representative of the public which must support changes in the system, of those who operate the system in a variety of capacities, and of those who either now or have been its inmates.*

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*We note the partial fulfillment of this recommendation in the recent appointment in New York of a "Select Committee on Correctional Institutions and Programs."

## II. THE INSTITUTIONAL SETTING

### A. FACILITIES

#### 1. Existing State Institutions

During the course of this study, visits were made to representative correctional institutions in the states of New York and Maine. With minor variations but few notable exceptions, these institutions are characterized by oppressive bulk and intimidating facades and, on the interior, by labyrinthine hallways leading to drab open work spaces and to tiny cubicles which pass for living space--all of this typically in the incongruous setting of small rural towns or open farmland.

These depressing characteristics are particularly descriptive of institutions in New York, where there are nearly 2,000 inmates in some massive institutions, but the Maine State Prison provides the same effect with a population of just slightly more than 300. There is obviously a variety of attitudes toward the management of institutional logistics; in some institutions, inmates are allowed to move about with a fair amount of freedom from one assignment to another, while in others they are marched about in silent groups.

In all these institutions, a disproportionate amount of time must be spent in traffic control and maintenance of the routine daily schedule.

Without dissent, we heard from superintendents, counselors, teachers, guards, and former inmates, a request that institutions be limited in size in order to restore a human perspective to the rehabilitative environment, to increase personal contacts among staff and inmates, to enhance the sense of individual worth, and to reduce the necessity of logistical manipulation. Such a recommendation was also included in the report of the President's Commission on Law Enforcement and Administration of Justice and has been implicitly accepted by the New York Department of Correctional Services and its predecessors in the decision to limit the size of its model program at Wallkill.[14]

Each state, however, has a substantial investment in its current correctional facilities, and the cost of dismantling those facilities and constructing smaller units would be prohibitive. Certainly, it is possible in the long run to phase out these massive institutions in favor of smaller facilities nearer to metropolitan areas, but it is also possible to achieve some of the advantages of smaller units in the present facilities by creating in them clusters of residential and

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[14] Challenge, p. 173.

work arrangements more conducive to the development of a sense of community.

For instance, at Green Haven there are already three distinct residential units. The East Side, with its open tiers conducive primarily to a sense of being caged, is totally separate from the West Side of the institution. Except for open visitation allowed during picnics on national holidays, there is no contact between inmates on the East Side and those on the West. This arrangement was created for custodial purposes, but it could be exploited to improve the correctional program.

Currently, vocational instructors are employed for eight hours each day, but inmates are given only four hours each day for classroom and shop programs--from 8:15 until 10:45 in the morning, and from 1:15 until 2:45 in the afternoon. By staggering the schedules of East and West, it would be possible to double the capacity of the training programs without increasing expenditures for staff or facilities. Further, while the open tiers on the East Side may present a hopeless situation, it should be possible to create even smaller communities of staff and inmates on the West Side by assigning teams of custodial and professional staff to each floor.

In addition to East and West at Green Haven, there is also "J" [illegible], built originally for the narcotics program, which has individual rooms and a recreation area. This unit is currently utilized primarily

for logistical convenience--it houses farm workers and others with odd schedule requirements--but it has great potential for use as a rehabilitative device, as an incentive for inmates in less desirable quarters, and as a "community" center. To varying extents, other institutions have similar possibilities.

<u>Recommendation 2</u>: that emphasis in future planning be placed on the provision of small institutions near metropolitan areas which offer greater supportive resources and opportunities for rehabilitative programs.

<u>Recommendation 3</u>: that an examination be made of each existing institution to determine the feasibility of creating residential and program clusters to provide each inmate with identity in a group smaller than the total population of the institution.

2. <u>Classification of Institutions.</u>

Much of the inordinate emphasis on custodial requirements is necessitated by the presence in each institution of a small group of inmates who require maximum security. New York State Commissioner Russell Oswald has noted as a "fact of life" that "there is a militant, hard-core inmate group, amounting to about 10 percent of the total population, whose attitudes and actions force institutional administrators to impose maximum security restrictions on the total inmate population . . . This means that educational and vocational courses as well as other programs are interrupted, sometimes for

extended periods, and denied to the 90 percent."[15]

In its preliminary report, the Governor's Special Committee on Criminal Offenders stated that "the degree of security needed for confinement of an inmate depends upon the inmate."[16] In the present system, however, the degree of security for each inmate is too often dependent not on the inmate at all, but on a very small number of his fellow inmates. Originally, institutions were classified according to type of inmate as an effort to counteract this problem and to relate programs and services more effectively to inmate needs. Institutional classification differences in New York have been obscured, however, by the influx of inmates from New York City and by transfers resulting from overcrowding and from disturbances. The Department of Correctional Services is currently studying the possibility of a return to a classification system, and we feel that such a system should have high priority for the department.

Actually, despite its image as a mammoth system, New York has a relatively small number of correctional institutions with which to arrange a diversified plan. This problem could be alleviated by coordinating local and state facilities and by developing independent

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[15] Oswald, "Society's Puzzle: The Paroled Offender," State Government: The Journal of State Affairs, 44, no. 2 (Spring 1971), 86.

[16] "Preliminary Report," June 1968, p. 199.

smaller units in larger institutions.

In considering the degrees of security required in various classifications of institutions, some consideration should be given to the possibility of non-security or "open" institutions at one end of the range. The Governor's Special Committee on Criminal Offenders suggested in 1968 a differentiation between security institutions and non-security institutions as a means of ridding the department of the dominating public expectation of total security and the consequent inability of the system to take risks.[17] In spite of agreement that a substantial proportion of present inmates do not represent a danger to society and need not be securely confined,[18] security has been an overriding concern for all inmates because of the negative publicity value of any escape. The committee hypothetically juxtaposed the disproportionate press coverage for the prison escape of an embezzler against the coverage for the parole escape of a murderer as an example of the prison system's vulnerability to negative publicity on this count. We support the development of institutions and programs which would avoid this risk for the system, not simply to protect the

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[17] Ibid., pp. 217-18.

[18] See, for example, Robert A. Diamond and Arlene Alligood, eds., Crime and the Law (Washington: Congressional Quarterly, Inc., 1971), p. 14.

system from negative publicity, but because such a development would enable the system to offer more meaningful rehabilitative programs to many inmates without the tyranny of a total concern for custody.

Recommendation 4: that high priority be given 1) to the classification of institutions and of units within institutions by degree of security as well as by the nature of rehabilitative programs and services and 2) to the development of non-security institutions or units in institutions.

3. Coordination of Facilities.

The President's Task Force on Prisoner Rehabilitation noted that our "correctional system" is actually "not a system at all, but a fortuitous agglomeration" of federal, state, county, and municipal systems and units.[19] The disadvantage at the national level--principally, inefficienty and ineffectiveness resulting from inconsistency, lack of communication, and the inability to coordinate manpower, facility, and financial resources--is reflected also at the state level.

While the Advisory Commission on Intergovernmental Relations has noted that the correctional systems in New York and Maine are much more highly centralized than those in many other states, some

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[19] Criminal Offender, p. 5.

fragmentation remains.[20] In New York, the Department of Correctional Services, formed in January of 1971 by merger of the Department of Correction and the Division of Parole, has responsibility for adult institutions and parole; the Division of Probation and some local agencies have responsibilities for misdemeanants and adult probation; the Department of Social Services has responsibility for juvenile institutions and juvenile aftercare; and local agencies have responsibilities for juvenile detention, juvenile probation, and local adult institutions. In Maine, the Department of Mental Health and Corrections has responsibility for juvenile probation, juvenile institutions, juvenile aftercare, misdeameanant probation, adult probation, adult institutions, and parole; local agencies are responsible for juvenile detention and local adult institutions and jails.

With regard to matters appropriately of concern to this particular study--that is, matters related to inmate training and post-release employment--we find no particular disadvantage in the division of responsibility among Correctional Services, Probation, and Social Services in New York. On the other hand, it seems to us that the division in both New York and Maine between state and local adult institutions results in an unnecessary impediment to maximum

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20 State-Local Relations, pp. 283, 285.

utilization of resources available for the rehabilitation of adult offenders. It was pointed out to us by a member of the staff at Maine State Prison, for instance, that the distance of the prison from available jobs prevents the assignment of any significant number of inmates to work-release programs, while local jails closer to job opportunities house offenders who are not eligible for work-release and often have vacant space which could be utilized by inmates in the state system.

To some extent, the discrepancy between the location of skill training programs and the location of jobs for work-release opportunities is true also for New York, but the situation there is compounded by the fact that many New York City inmates are housed in State facilities. More than half of the spaces available at Clinton Correctional Facility in Dannemora have been made available for inmates from the City;[21] since most such inmates are serving short-term sentences of only several months, however, the ratios of short-term City inmates to long-term State inmates is much higher than might be expected. The resulting inordinate demands on the institutional

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[21] Samuel L. Greenberg, Chairman, N.Y. Senate Finance Committee Minority, "A Review of Various Aspects of the NYS Correctional Program," Mimeographed, n.d. [Fall 1971], p. 61. This report includes a discussion of the lack of employment opportunities in the vicinity of state correctional institutions in New York, pp. 3, 59-60, and Tables XI and XIII.

staff for such services as initial interviews and orientation is a distinct impediment to the provision for more long-range rehabilitation services.

Without regard to political and financial factors which we are not able to assess in this report, we feel that rehabilitation programs related to training and employment would be greatly strengthened by coordination and supervision of all adult institutional facilities in their respective states by the Department of Correctional Services in New York and the Bureau of Corrections in Maine.

Recommendation 5: that examination be made of the feasibility of coordination and supervision at the state level of all correctional and custodial facilities for adult offenders throughout the states of New York and Maine.

B. ROUTINES AND PROCEDURES

1. Processing of Inmates

Throughout our visits to institutions in the two states, we heard the complaint from members of the professional staff that sentences are in general too short for effective rehabilitation programs, despite evidence that sentences in the United States are comparatively lengthy and despite growing evidence that programs for short terms can be significantly effective.[22] Further, upon examining the system, we

[22] See, for example, Hans Zeisel, "Crime and Law and Order," p. 626; and Joseph R. Rowan, "Progressive Corrections," p. 76.

found that a critical amount of time is consumed by the institutions themselves in processing inmates and assigning them to programs. In the New York State system, processing is actually done at regional reception centers before an inmate arrives at a correctional facility; he is accompanied to the institution by a thorough dossier, including medical, vocational, psychological, and psychiatric reports, a comprehensive social history, reports from officers, chaplains, and others, and recommendations for a rehabilitation program.

Further "processing" at the institution consists essentially of waiting for the system to catch up with its new arrival and allow him to begin a program--a program which may or may not resemble that recommended by the reception center. Such institutional "processing" in the larger facilities normally requires six to eight weeks and often consumes as much as four months of an inmate's term in the institution. At one institution we visited, this lengthy process begins with a brief interview by a supervisory custodial officer a few days after arrival in order to explain institutional rules and regulations; two to four weeks later, there is an initial interview with a counselor in the Service Unit, during which education, work, and training programs are described and the inmate is asked to choose priorities; three to four weeks later, he meets with the classification committee to have his program approved. Even then, he often must take a temporary assignment and await an opening in the approved program.

It appears that very little is accomplished in this institutional processing system. In no case is the Service Unit adequately staffed to allow for any meaningful program counseling beyond that already provided by the reception center, and the record of cases handled at the institution just described suggests that the classification committee spends an average of five or six minutes with each inmate. The classification system at the institution allows for an on-the-scene review of the reception center recommendation by those who will be charged with carrying out the program, but the system as it now stands allows only for decisions based on the most superficial examination of the record and on available vacancies at the institution. The system results in the loss of a significant amount of time for the inmate's program as well as a loss of any rehabilitative momentum established at the reception center, without any demonstrable compensatory gains, either for the inmate or for the system.

The situation could be remedied in a number of ways--most obviously by increasing the staff at the institutions. The more favorable ratio of staff to inmates at Wallkill has made a significant difference. In contrast to the lengthy, bare, and impersonal processing at larger institutions, inmates entering Wallkill are interviewed by the superintendent, the deputy superintendent, a member of the Service Unit staff, the vocational supervisor, the recreational supervisor, a parole representative, and a chaplain--all in three days. By the

fourth day, each inmate is in a training program or, at worst, in a temporary assignment to a work detail. The significant difference is that he has an opportunity for speedy and personal identification with the institution and that he is almost immediately active and productive.

Even with increased staffing, which we support for other reasons to be discussed later, it appears that processing at the institutions is unnecessarily duplicative of the impressive effort already being made at reception centers. This is implicitly acknowledged in the occasional practice of assigning inmates to work on training programs recommended by the reception center before he meets the classification committee or a counselor if there is a vacancy. We feel that this could be standard practice if there were better coordination of needs and vacancies in the process of committing inmates to particular institutions from the reception center. We recognize the need for and endorse a brief period of orientation to the institution. We also recognize the possibility that special problems such as uncooperativeness on the part of an inmate or hostility between inmates may necessitate the removal of an inmate from a program, but all institutions have procedures for such removal.

<u>Recommendation 8</u>: that an information system be established to enable the reception centers to coordinate the assignment of inmates to institutions with the availability of vacancies in appropriate programs and that, as a matter of course, the recommendation of the reception

center be followed at the institution and the recommended program be initiated after a brief orientation to the institution.

Apparently, occasional overcrowding at reception centers results in some inmates being sent on to institutions without diagnostic work or recommendations, and the staff at the institution must then design a program. The system we recommend would require that reception centers be adequately staffed, of course, and that diagnostic work be done and recommendations be made exclusively at those centers.

An additional complicating factor is the necessity of processing at each institution inmates who transfer or are transferred from other institutions. Since transfer is the prerogative of officers at the state level, the information system already recommended should be utilized to prevent the transfer of any inmate unless there is an appropriate vacancy available, and the procedure should be the same as for inmates entering from the reception center.

The problem of program delay is much less acute in Maine. Upon sentencing, inmates are committed directly to an institution. At the Men's Correctional Center, there is a two-week reception and orientation period with an approach comparable to that at Wallkill; a training program follows immediately. At the Maine State Prison, program assignment follows a two-week reception and orientation period and a one-week assignment to the general labor force.

2. Daily Schedules

Another time-consuming impediment to providing for rehabilitative programs is the institutional daily schedule. Most schedules in the New York institutions and at the Maine State Prison appear to have been designed to coincide with the rising and setting of the sun. Every activity must be accommodated in daylight hours: meals, showers, haircuts, visits, recreation, training, work, counseling, sick call, etc. In what purports to be a ten-hour day outside the cell at one institution, only five hours are allowed for training and work programs, and these programs must share this time with every activity other than recreation and meals. Showers, haircuts, visits, counseling, sick call, trips to the commissary--all of these activities must be fitted in during the time allocated to training and work programs.

By contrast, the Men's and Women's Correctional Centers in Maine are committed to eight-hour work days, with other activities accommodated in the evenings or on weekends. This seems to be a reasonable model to follow, not only to decrease the inordinate amount of time required in the cell in most institutions, but to accustom the inmate to job demands outside the institution and to increase the amount of time available with training instructors and work supervisors. It seems hardly rehabilitative to accustom adult inmates to having the afternoon off and to taking work time

for routine personal chores. At the very least, it seems to us that acculturation of the adult inmate to the world of work requires that he be given the option of participating in more productive and remunerative work during daylight hours.

Recommendation 7: that the daily schedule of each institution be redesigned to accommodate an eight-hour work day, recognizing that the day might reasonably be divided into smaller units more conducive to instructional and learning activities in some programs.

3. Disciplinary Measures.

Disciplinary measures also necessarily impinge upon the time available for training and work programs. Some procedures in the administering of discipline, however, appear to be unnecessarily stringent and detrimental to training. In some institutions, inmates are immediately confined to their cells (keep-locked) upon issuance of a disciplinary report until the next meeting of the adjustment committee. While the time involved is minimal, since the committee meets on Monday, Wednesday, and Friday of each week, we feel that such a procedure nevertheless often removes inmates from training sessions without adequate cause. In other institutions, inmates are allowed to continue their regular programs after issuance of a disciplinary report unless the report is for a serious infraction. We feel that this ought to be standard practice. We doubt that the deterrent and punitive effect of immediate keep-lock compensates for

the loss of time available for training, especially in light of other constraints on that time.

The adjustment committee has a range of penalties available--reprimand, loss of recreation privilege, loss of commissary privilege, suspended cell time, cell time (keep-lock), and segregation. Such a range enables the committee to match the penalty to the seriousness of the offense and to issue penalties which will not remove the inmate from his rehabilitative training program. While we were not able to review the records of the penalties given, we are disturbed at comments from members of the staff that keep-lock for several days might be the standard penalty for such infractions as possession of an allegedly pornographic story or for other violations determined on a highly subjective basis. Disciplinary proceedings and penalties should be accompanied by at least rudimentary standards of due process, for the protection of the inmate and of the training program, and every effort should be made to avoid penalties wherever possible which remove the inmate from his training program.

Recommendation 8: that disciplinary procedures be examined at each institution with regard to their relationship to training and other rehabilitative programs and that they be modified to complement rather than compete with those programs.

C. TRAINING AND COUNSELING STAFF

1. Current Problems.

Perhaps the greatest single difficulty in establishing and maintaining a corrective program is insufficient staffing. In a report for the Joint Commission on Correctional Manpower and Training, John Galvin and Loren Karacki reported that there was roughly one full-time employee for every four adult offenders confined in state and federal correctional institutions.[23] However, the overwhelming majority of those employees--34,000 of a total of 54,000--were line correctional officers. In other categories, there was only one employee related to treatment and training for every thirty offenders and one teacher for every 130 offenders. Had the figures accounted for the rapid turnover in offenders, the differential between the numbers of staff personnel and the numbers of offenders whom they must treat would be even greater.

Joseph Collins and Richard Weisberg have reported in Manpower Research that there is only one vocational instructor for every 370 inmates in state prisons, and Robert Diamond has noted in Crime and the Law that the ratio of classification workers to inmates is 1 to 450

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23 Galvin and Karacki, Manpower and Training in Correctional Institutions (Washington: Joint Commission, 1969), p. 11.

and of psychologists, 1 to 1200.[24] According to the minority report of the New York State Senate Finance Committee, the ratio of authorized positions to inmate capacity in New York institutions is slightly worse than these national figures.[25] Considering all employees, there is one authorized position for every four inmates, as in the national figure, and one custodial position for every five inmates, but there is only one position related to education and counseling for every seventy-one inmates. Our check of selected institutions showed that the ratio of actual employees to actual inmates is considerably worse in some individual facilities.

At one institution we visited, there is only one employee related to education and counseling for every 120 inmates. At another, the counseling staff was cut approximately in half because of budget reductions just last year (1971), with the consequence that there is now just one counselor for every 550 inmates. With such huge case loads, with the requirement of initial interviews for entering inmates, and with the limited amount of time available each day for interviews

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24 Collins and Weisberg, "Training Needs in Correctional Institutions," Manpower Research, 8 (April 1966), p. 7; Diamond, Crime and the Law (Washington: Congressional Quarterly, Inc., 1971), p. 14.

25 Greenberg, "A Review of Various Aspects of the NYS Correctional Program," pp. 4, 31, Appendix I.

the counselor's role is reduced to meeting each entering inmate and then answering notes left by those inmates with questions or requests. In spite of recommendations that follow with regard to enhancing the program with other available personnel, we feel that it is an obvious requirement that additional staffing be provided for the correctional system.

Recommendation 9: that highest priority be given to the provision of funds for additional staffing of correctional institutions, with particular emphasis on education, training, counseling, and related services.

In addition to the enormous burden reflected in the numbers we have cited, members of the professional staffs of the institutions we visited find themselves isolated from sources of professional, financial, and moral support. As one veteran staff member said to us, "We are as confined as the inmate." Counselors, teachers, and vocational instructors have little or no contact with the outside world--with others in education, business, and trade, or with ex-inmates with whom they have worked, other than those who are returned to the prison as repeaters. One of the major rewards for working in corrections is denied to these professional staff members by the failure to feed information back to them from the parole system or other sources with regard to their successes and by institutional rules and regulations, in some cases, which prohibit contact between

staff members and former inmates. This lack of information also prevents the improvement of instructional methods and techniques which might result from the constant feedback of results.

Recommendation 10: that steps be taken to provide information to the staff of each institution on the experience of inmates released from the institution.

Recommendation 11: that members of the instructional staff in vocational areas be encouraged to develop contacts with persons actively engaged in relevant businesses and trades and that time and travel expenses be provided for such instructors to visit potential employers of inmates in their vocational area.

Recommendation 12: that money and time be provided for members [illegible] training and counseling staffs of all institutions [illegible]

> It is easy to see why deterring offenders from further crime is almost impossible in such a climate. Despite its avowed purpose, the authoritarian regime is deficient in instilling discipline and respect for authority. The maintenance of distance between staff and inmate reinforces the idea of many criminals and delinquents that law and authority are ranged against them; the emphasis on a myriad of rules, unexplained to inmates and often unreasoned in operation, hardly educates a prisoner in the values of order and society. The existence of an illegitimate subculture of inmate relationships, often founded on violence and corruption, intensifies the criminal's commitment to these values.[27]

By contrast, the recommended collaborative model is "structured around the partnership of all inmates and staff members in the process of rehabilitation. It tries to oppose the tendency for an institution to become isolated from the community physically and in terms of values and instead seeks to assimilate inmates in normal noncriminal ways of life, partly through close identification with staff and partly through increased communication with the outside community."[28] As a significant by-product, collaboration also results in more efficient use of personnel resources, a factor which is a critical need in the correction system.

In our visits to institutions in New York and Maine, we found total

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[27] Task Force Report: Corrections (Washington: GPO, 1967), p. 46.

[28] Ibid., p. 48.

commitment to the collaborative model only at the Women's Correctional Center in Maine--an institution which has the fortunate but unique advantage of having only ten inmates. In more typical institutions, we found varying degrees of commitment to or resistance to the collaborative model among members of the staff, and we found almost no intentional or official implementation of the concept. We did find, however, that the exigencies of institutional life--that is, limited staffing and unlimited problems--have forced scattered bits and pieces of collaboration in various facilities which, if systematized, might result in a reduction of demands on staff members and in a general improvement of the correctional environment.

a. <u>Service Units and Parole Officers.</u> The Service Unit is that area of the institutional staff in which the ratio of staff to inmates, especially in light of the duties required and services expected, is perhaps the least favorable. At the institutions we visited, that unfavorable ratio for the Service Unit is almost exactly duplicated for the institutional parole officers. The relationship of the Service Unit staff and the parole officers in most cases reflects the former division of their agencies at the state level, and the merger of state services in 1971 in New York is not yet operative at the institutional level. While members of each staff are involved together in such activities as adjustment committees, program committees, and classification

committees in various institutions, each unit attempts to deal with the entire institutional population--the Service Unit, from commitment to pre-release; the parole officers, from pre-release onward. What results is a lack of continuity in the services provided for inmates and an unnecessary duplication of effort and narrowness of perspective for members of the staff. Repeatedly, we heard references to the "inside" orientation of the Service Unit and the instructional staff and the "outside" orientation of parole; what is required is a comprehensive "inside-out" orientation to the full rehabilitation program.

At one institution particularly burdened with an impossibly high number of inmates per counselor, counselors in the Service Unit and counselors in parole have logically turned to each other for assistance. In an effort to be available to inmates on a more frequent and regular basis, they are now pooling their personnel and information resources and coordinating their efforts. We think this pattern, born of necessity at this institution, is desirable in terms of efficient manpower utilization and in terms of effective rehabilitation services, and it should be further developed and standardized for all institutions.

Recommendation 13: that the merger of corrections and parole at the State level in New York be implemented also at the institutional level in order to facilitate the development of a continuous program of rehabilitation, in order to provide a natural conduit for information and ideas in both directions through the rehabilitative process,

and in order to make maximum use of personnel currently available for counseling services in institutions.

5. Correctional Officers. The most obvious personnel resource for correctional programs is the large staff of correctional officers at each institution. Despite the change in terminology from "guards" to "correctional officers" (except at Maine State Prison), the duties of these employees remain narrowly defined in terms of custodial responsibilities. Almost every factor in the system argues for involving correctional officers and guards in rehabilitation programs--the urgent requirements for expanding the size of the rehabilitation staff, the interest of the officers themselves in having meaningful work and in using and improving their abilities, and the interests of inmates for whom these officers are the most frequent and most direct contact with institutional authority. Indeed, there is no persuasive argument, not even in terms of security requirements, for maintaining the current limitations on opportunities and responsibilities for this significantly large group of employees.

The report of the Task Force on Corrections for the President's Commission on Law Enforcement and the Administration of Justice (and many other statements on the subject) recognized the potentially significant positive impact of correctional officers on inmates and called for increased educational and training opportunities for officers in order to develop further their interest in corrections and

to improve their skills.[29] Increased compensation for officers who take advantage of such programs is a necessary concomitant of the recommendation.

The relationship of correctional officers and guards to inmates is perhaps the most sensitive area in the institution and the area in which there is most resistance to change from authoritarian roles to collaborative ones. The attitude expressed to us by one senior correction counselor who recited for us the problems which occur when officers get friendly with inmates and are "taken advantage of" by them is not unusual; his explanation of the "respect" afforded one particular officer by inmates was that "if he tells them to dig a hole, they know they better dig the hole or they'll get put in it."

We have no way of determining the pervasiveness of such an attitude in the system, but we know that it is not unanimous. The senior correction counselor in one of the most security-oriented institutions we visited, a former guard himself, spoke eloquently of the need to make correctional officers feel more a part of the rehabilitation program, noting potential advantages to the system and to the officers of such a development. Recognizing that some officers are

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29 Task Force Report: Corrections, p. 46. See also Greenberg, "A Review of Various Aspects of the NYS Correctional Program," pp. 26, 40-42.

more amenable to involvement in the program than others, he cited examples of routine reports written by officers which showed evidence of strong personal and professional interest in the rehabilitational progress of inmates and of efforts beyond the call of duty in working with inmates."

Of course, some officers with whom we talked boasted of their custodial control of inmates--for example, the sophistication of surveillance systems or remote control units for operating locks on cell and hallway gates--but others shared with us on their own initiative stories of successful rehabilitation and expressed their pride in assistance given to inmates. It seems to us that the ideals of rehabilitation programs, the current staff pressures in institutions, and the interest of officers in meaningful work as well as promotional opportunities make absolutely necessary the development of programs to utilize this personnel resource.

In a number of significant but hidden ways, the system has recognized the potential of correctional officers for involvement in the rehabilitation program--hidden, because involvement in the rehabilitation program has required a total transformation from "officer" to "civilian." In our visits to institutions, we found a number of counselors, teachers, and supervisors who were formerly uniformed guards and correctional officers. We were advised that many uniformed officers at present are also qualified for positions in the

rehabilitative program, and we see no reason why they should not be utilized for rehabilitation along with their current custodial responsibilities.

The most dramatic evidence of the potential for involvement of correctional officers and guards in rehabilitation programs and of their amenability to such involvement is seen in the group counseling program available at several institutions in both states. For the most part, these counseling programs are dependent on the contributed time of correctional officers for training and for conduct of the programs. Despite the lack of any financial incentive, other than some overtime pay, there has been little or no difficulty in obtaining volunteers from the staff of correctional officers. Rather, the difficulty has been in obtaining funds for training programs and, given the limited amount of time available for programming in most institutions, in scheduling counseling sessions at times when both inmates and officers are available.

<u>Recommendation 14</u>: that high priority be given [illegible] developing training programs for correctional officers and gu[illegible] to enable them to participate in the rehabilitation programs o[illegible] institution, 2) to redesigning job classifications and wage scales [illegible]llow for appropriate recognition for officers participating in s[illegible] programs, and 3) to organizing collaborative staff teams to serve inmates and to reduce the isolation of correctional officers from the full rehabilitation programs of the institution.

Inmates and Ex-Inmates. The major current manpower resource for corrections is even more visible than guards, yet is somehow less obvious--that is, the inmate population itself. The definitive work on the subject is Offenders as a Correctional Manpower Resource, a report of the Joint Commission on Correctional Manpower and Training.[30] This report, with its basic concepts incorporated in the final report of the Joint Commission, argues for utilizing inmates in the rehabilitation program as a means of using the inmates' knowledge as a resource rather than a liability.[31] The same principle applies to the sub-culture of inmate relationships, for such a sub-culture surely exists with or without the approval of the institution administration and might better be used as a resource for rehabilitation than be ignored and allowed to become a liability for the program. The report notes precedents for exploiting the positive potential of such relationships in other rehabilitative programs such as Alcoholics Anonymous, Synanon, and literacy training.[32]

The concept has also been accepted by other national studies of corrections. The Advisory Commission on Intergovernmental

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[30] Offenders as a Correctional Manpower Resource (Washington, American Correctional Association, 1970).

[31] Ibid., p. 11.

[32] Ibid., p. 2.

Relations noted that inmates who have successfully completed a rehabilitation program have the "special advantage of having been intimate observers of correctional activities and are keenly aware of the relevance of various rehabilitative programs" and that "with careful selection and adequate training, this group can produce many valuable workers."[33] The President's Task Force on Prisoner Rehabilitation agreed: "In some ways," it reported, "only an ex-offender can understand fully the problems offenders face."[34]

Albert Morris, in "The Involvement of Offenders in the Prevention and Correction of Criminal Behavior," has documented the trend toward the use of offenders in corrections and has examined its potentialities and limitations. "The potential," he writes, "of those who have experienced the miseries and alienation of imprisonment and the need for more effective communication with those who require help are the justification for the wise and careful training for offenders."[35] The trend is hardly pervasive at this point, but by considering scattered and isolated examples, Morris was able to compile

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[33] State-Local Relations in the Criminal Justice System, p. 62.

[34] The Criminal Offender--What Should Be Done?, p. 23. See also A Time to Act, p. 45.

[35] Morris, "The Involvement of Offenders," Massachusetts Correctional Association Research Bulletin, 20 (October, 1970), 27.

a comprehensive list of positions in the correctional field held by offenders and former offenders--positions ranging from parole aide to warden and including everything in between."[36]

In our visits to institutions in New York and Maine, we found no significant utilization of inmates in the correctional program, with the notable exception of group counseling programs in several institutions and the establishment of teacher aide classifications for a small number of inmates in one or two institutions. We found that ex-inmates have been successfully employed in Maine at the Stevens School and in the recently initiated EXIT program of job placement for releasees. In both states, ex-inmates who had made a successful adjustment to post-institution life had been invited back to talk with inmates still incarcerated.

The report of the President's Task Force on Prisoner Rehabilitation acknowledges such exploration of the use of ex-offenders as counselors and recommends that it be intensified.[37] Joseph Rowan, Executive Director of the John Howard Association, has reported that the states of Minnesota, Illinois, Iowa, California, and Washington

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[36] Ibid., p. 16.

[37] The Criminal Offender, p. 23.

to hire ex-offenders for positions in the correctional system.[38] Beyond those few examples already cited, there is no systematic hiring of ex-inmates in New York and Maine.

Resistance to the use of inmates and ex-inmates in corrections has been well documented, particularly in the report of the Joint Commission on Correctional Manpower and Training. This Commission has noted that the problem stems from agency policies and practices more often than from legal barriers.[39] In our visit to an institution in New York, a senior correction counselor, who complained to us at one point that major corporations would not hire ex-offenders released from the institution, told us at another point that he had not seen any inmate in nearly 30 years of service that he would be willing to employ as an administrative assistant, teacher aide, or in any other capacity. In Maine, despite a statement from the Bureau of Corrections that former offenders should not be excluded automatically from any category of employment in corrections, for example, a regulation of the Maine State Prison prohibits former inmates of any penal institution from corresponding or visiting with

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[38] "Progressive Corrections," p. 75.

[39] <u>A Time to Act</u>, pp. 31-47.

any current inmate.[40] While it may be reasonable to exclude certain individual ex-offenders from certain roles in the institution, blanket prohibitions should be suspended in order to conform with policies of the Bureau of Corrections, to facilitate development of programs involving inmates, and to set an example for other employers in the community.

The most obvious place to begin to end the discrimination against employment of ex-offenders--discrimination which negates all the efforts at rehabilitation by the correctional system--is at home, in the correctional system itself. In making just such a recommendation, the Joint Commission on Correctional Manpower and Training acknowledged the risk involved in the hiring of ex-offenders: "The public, as well as the hiring agent, should be prepared for the fact that some will not work well as correctional employees." The same is true, however, of the general population from which corrections now recruits its personnel.[41]

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Recommendation [illegible]: that rules and regulations in the correctional divisions at the state level in New York and Maine and in institutions in both states be purged of all blanket prohibitions against the employment or other utilization of inmates or ex-inmates.

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[40] Morris, "The Involvement of Offenders," p. 15 [illegible] State Prison, "Regulations Governing Correspondence, Gifts, and Packages," n.d., sec. 1.3.

[41] A Time to Act, p. 44.

Recommendation 16: that steps be taken to increase the training and employment of inmates as aides to the professional staff of institutions for orientation, counseling, education, and vocational training programs.

Recommendation 17: that an affirmative-action plan be adopted at the state and institutional levels for the recruitment, training, and employment of former inmates in the correctional system, including those on parole or eligible for parole.

d. Para-professionals and Volunteers. With regard to the use of inmates in corrections as para-professional aides, the Joint Commission has noted the parallel development of similar new careers for the poor and has provided a comprehensive bibliography on "new careers" and the non-professional.[42] In a separate report for the Commission, Roma McNickle reported "considerable success . . . in fields allied to corrections with the use of case aides and so-called 'indigenous workers' to bridge the gap between the agency and the community" and suggested that corrections "experiment with the use of such non-professionals."[43]

The Advisory Commission on Intergovernmental Relations recommended that new personnel classifications be established so that

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[42] Offenders as a Correctional Manpower Resource, pp. 2 ff., 98-102.

[43] McNickle, ed., Differences That Make A Difference (Washington: Joint Commission, 1970), p. 67.

para-professionals could be employed in corrections. While recognizing objections to the use of para-professionals, the Advisory Commission argued that such employees can be effective and that they offer "the greatest hope of obtaining, in a relatively short period of time, the numbers of trained personnel required."[44]

Another source of assistance in the community are the numerous volunteer programs, some of which have been utilized effectively for narcotics addiction counseling in various institutions, and individual volunteers.[45] Many institutions are far removed from urban centers and, therefore, from potential volunteers, but we believe that efforts should be made where possible to develop programs involving volunteer service as a means of obtaining urgently needed assistance and of facilitating increased communication between inmates and people in the outside community.[46]

Recommendation 18: that steps be taken to develop programs in correctional institutions to recruit and train para-professional and non-professional people from the community as employees and as volunteers.

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[44] State-Local Relations, p. 62.

[45] Greenberg, "A Review of Various Aspects of the NYS Correctional Program," p. 41.

[46] See, for example, Rowan, "Progressive Corrections," p. 74.

3. Minority Staffing Needs.

The problem of minorities in correctional institutions is extremely complex; we wish to comment only on aspects pertaining to training and employment. The need for dramatic increases in the numbers of minority personnel on correctional staffs has been well documented and widely reported, and we support recommendations on all sides for affirmative-action plans to increase minority employment.[47]

Of 32 new inmates at one institution in the week that we visited it, 28 spoke only Spanish, yet there was no bi-lingual teacher on the staff at the institution. Obviously, no worthwhile rehabilitation program can be conducted for those Spanish-speaking inmates. In another institution, minority inmates comprise nearly three-fourths of the total population while there are no minority employees at all on the staff. Members of the staff lamented the fact that no Spanish-speaking or other minority personnel could be induced to join the staff of the institution because of its distance from New York City or other areas with minority populations.

Among the alternatives to such a situation is the proposal which we have already made for utilizing other inmates in para-professional

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[47] See, for example, John N. Mitchell, "New Doors, Not Old Walls," p. 12.

positions in order to obtain bi-lingual or minority staff assistance. Another is to assign minority inmates to institutions in areas in which minority personnel are available.

The Governor's Special Committee on Criminal Offenders in New York included among its general criteria for institutional assignment the principle that racial imbalance should be avoided and that transfers should be made in such a manner as to avoid the concentration of persons of any particular race, creed, or origin in any institution.[46] While we have not been able to determine whether such a principle is in fact the policy of the Department of Correctional Services, we feel that it is not valid in cases in which it works to the disadvantage of the minority inmate by denying him access to minority employees or programs or by requiring that he be bussed to some part of the state distant from his home in order to achieve racial balance in the correctional system.

Another difficulty in providing programs for minority inmates results from the "reverse discrimination" required in appointment and promotion in order to facilitate the availability of minority employees at all levels. At one institution we visited, for instance, the appointment of a Spanish-speaking officer to the orientation

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[46] *Preliminary Report*, p. 220.

program was challenged by a mono-lingual officer with seniority. Nevertheless, the requirements of a rehabilitation program for minority inmates justify the specification of minority skills or attributes as a condition of employment for certain positions.

Recommendation 19: that highest priority be given to the employment of minority personnel at all levels of the correctional staff, in non-professional, para-professional, and professional positions.

Recommendation 20: that minority inmates be assigned to institutions in which programs and services oriented to their needs can be provided, until such time as the resources of the system allow for the provision of such programs and services in all institutions.

Recommendation 21: that job descriptions be established which would require minority attributes for certain positions in the correctional program.

# III. TRAINING PROGRAMS

## A. TRAINING AND REHABILITATION

Recidivism is a major test of the effectiveness of the correctional system, yet there has been surprisingly little study of the causes of recidivism and there is little hard information about the amount or extent of it. There are consequently no norms by which to set goals or against which to measure the effectiveness of programs, techniques, learning and work conditions, or other factors related to institutional life and rehabilitation.

Estimates of recidivism range from [illegible] percent to [illegible] percent but, as with actual reports of recidivism, they are difficult or even impossible to compare because of the lack of standard definitions and the almost universal failure to supply operating definitions with estimates and reports.[48] Only in rare instances is it indicated whether recidivists include those returned to prison for any reason, including parole violations, or are exclusively those ex-inmates who are sentenced for new crimes.

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[48] The Criminal Offender, p. [illegible]. See also [illegible], "Lawyer Says: 'We're Responsible,'" p. 47.

Whatever the actual valid figures, however, it is fair to judge from the range of estimates and reports that the rate of recidivism is alarmingly high. Richard Velde, Associate Administrator of the Law Enforcement Assistance Administration (LEAA) has reported that about 80 percent of all felonies are committed by repeaters and by those who have had prior contact with correction programs; according to U.S. Chief Justice Warren Burger, two-thirds of the 200,000 inmates in federal and state prisons are "alumni" of other prisons.[50]

The Department of Correctional Services in New York conducted a study of inmates processed through the Elmira Reception Center over a twenty-year period and found that more than 60 percent of those released after a first commitment were subsequently involved in additional difficulties.[51] Unfortunately, the study was based only on subsequent arrests, rather than convictions, and it may well be that ex-offenders are more subject to arrest than others. Of those who were identified as recidivists on this basis, nearly half were arrested in the first year after release, and almost all were arrested within five years after release.

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[50] Diamond, Crime and the Law, p. 11.

[51] Greenberg, pp. 5, 48-50.

Some institutions have had notably good records. It is estimated by officials at Wallkill that the rate of recidivism for inmates released from that facility is less than five percent for the commission of a new crime. Officials at the Women's Correctional Center in Maine estimate that in the Halfway House program at the Center the rate is less than two percent for the commission of a new crime and less than five percent for parole violations. Unfortunately, no studies have been made to determine whether these significantly low rates are the result of institutional conditions and programs, of aftercare services, or of unique characteristics of the inmates involved.

The lack of information on recidivism led the Governor's Special Committee on Criminal Offenders in New York to despair of recommending particular rehabilitative programs. "There is substantial question," the Committee reported, "as to what, if any, effect any of these programs has upon the likelihood that the offenders placed in them will commit additional crimes."[52]

There is general agreement, at least, that vocational training and employment have positive impact on the reduction of recidivism. The report on the "Restoration of Youth Through Training Project" in New York concluded from an analysis of inmates involved in the

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[52] *Preliminary Report*, p. 198. See also pp. 201 ff.

program and a comparable control group of non-participants that the project provided "research evidence that a program of vocational education and training in a jail, coupled with appropriate follow-up and help to manage the transition of release and re-entry into free society, does make a difference in subsequent work performance and social adjustment of offenders."[53] It further concluded, based on the significant reduction of recidivism among participating inmates, that "unemployment and recidivism are significantly related; non-recidivists tend to stay continuously employed--even when this means work is at a series of short-term jobs." Similar results were obtained in a comparable project at the Draper Correctional Center in Alabama.[54]

In its final report, A Time to Act, the Joint Commission on Correctional Manpower and Training cited "growing evidence that employment and appropriate training for relevant job opportunities are significant variables in the prediction of correctional outcomes."[55]

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[53] Staten Island Mental Health Society, Inc., "Restoration of Youth Through Training," Report to the U. S. Department of Labor, December 1966, pp. 1 ff., 123 ff., 137 ff.

[54] U. S. Department of Labor, Manpower Administration, The Draper Project, MDTA Experimental and Demonstration Findings No. 6 (Washington: GPO, 1971).

[55] A Time to Act, p. 57.

In addition to projects already mentioned, examples of this evidence may be found in a study of MDTA projects in correctional institutions, studies of parolee experience in Virginia and Wisconsin, and particularly in Daniel Glaser's monumental study of the federal prison and parole system.[56] Glaser concluded that "unemployment may be among the principal causal factors of recidivism of adult male offenders."[57]

The report of the President's Task Force on Prisoner Rehabilitation noted that "a common characteristic of offenders is a poor work record; indeed it is fair to conjecture that a considerable number of them took to crime in the first place for lack of ability or the opportunity--or both--to earn a legal living. Therefore, satisfying work experiences for institutionalized offenders, including vocational training when needed, and the assurance of decent jobs for released

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[56] George A. Pownall, "Employment Problems of Released Prisoners: Dimensions and Sociological Implications," in University of Wisconsin Center for Studies in Vocational and Technical Education, Education and Training in Correctional Institutions (Madison, Wisc.: Univ. of Wisconsin, 1968), pp. 65-66; Patricia Marshall, "Pathfinding Behind Bars," Manpower, 3, no. 1 (January 1971), 25; Collins and Weisberg, "Training Needs," p. 8; Daniel Glaser, The Effectiveness of a Prison and Parole System (Indianapolis: The Bobbs-Merrill Co., 1964).

[57] Glaser, p. 329.

offenders, should be at the heart of the correctional process."[58]

B. CURRENT PROBLEMS

1. Institutional Needs and Limited Resources.

Despite general agreement and repeated demonstrations that vocational training can be an effective tool in rehabilitation, the current state of such programs is evident in widespread criticism. "One would think," writes Hans Zeisel, "that if there is anything to give a prisoner, it is work and an opportunity to learn--to raise him to a level that will enable him to make an honest living once he comes out. What we do is, as a rule, the opposite."[59] The President's Task Force on Prisoner Rehabilitation agreed: "To subject people with poor work habits and a low work motivation to the enforced idleness that prevails in most prisons . . . , or to the meaningless chores and humiliating working conditions that are characteristic of many prison programs, is simply to reduce further their capacity to derive satisfaction from or ever take part in, workaday community life."[60]

It is not the purpose of this study to examine the quality of training programs offered in correctional institutions. It is necessary,

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[58] The Criminal Offender, pp. 8-9.

[59] "Crime and Law and Order," pp. 629-30.

[60] The Criminal Offender, p. 9.

however, to comment on certain aspects of those programs which constitute barriers to training and eventual employment.

The most obvious barrier to training is the lack of sufficient training programs. At Green Haven, for instance, seven programs are offered with a total enrollment capacity of less than five percent of the inmate population, and this includes shops such as barbering, carpentry, and machine shop, which are at least as much institutional maintenance programs as they are training programs.

In our visits to institutions, we found some differences of opinion with regard to some individual programs, but there was general agreement among those with whom we talked that most programs listed as vocational training actually function as institutional maintenance. In one shop, for example, an instructor who was extremely enthusiastic about the career opportunities in his field bemoaned the fact that his "trainees" were obliged to spend all their time making and repairing equipment for the institution--using obsolete equipment, inexpensive materials, and labor-intensive methods, all of which bore no relation to the current commercial state of his trade.

A more positive, and perhaps fairer, way to describe the current situation is to note that the budget restrictions imposed on the correctional facilities will not allow for the development of training programs and require that institutional maintenance be carried out

by inmates. Given this fact, members of the staff have made an effort to infuse maintenance programs with as much training as possible. In fact, Green Haven had only $1200 for materials and supplies for all its training programs in 1970-71, and that amount was cut by 10 percent for 1971-72; the per capita amount is considerably less than $1.00 per inmate.

We found that assignments to recommended or requested shop programs might be precluded also by security or disciplinary requirements for certain inmates but that the factors most frequently preventing assignments are the limited number of programs, the few vacancies in programs, and the maintenance requirements of the institution. Maintenance requirements can not only prevent an inmate's assignment to the program recommended for him but can also cause his removal from a program to meet seasonal needs, especially as related to farming.

We do not question the potential value of maintenance or other work programs as effective devices for rehabilitation, but we do feel that vocational training has requirements beyond those which can be met by maintenance programs--requirements of time available for instruction and study and for gaining related information and skills, and requirements of skill development rather than production, especially production based exclusively on institutional standards.

Under certain circumstances, maintenance programs can be effective opportunities for learning a trade or for maintaining a skill already acquired, and we found that such programs are often more attractive to inmates than traditional training programs. The opportunity to work outside on the farm from dawn until dusk, for instance, is certainly more attractive than the regimented and restricted schedule inside the institution.

For many legitimate reasons, therefore, some inmates prefer assignment to institutional maintenance programs, and these programs can provide effective rehabilitative support. With adequate funding, however, it should be possible to continue them as options in the range of programs offered by the institution and prevent them from requiring the time of inmates who properly ought to be in vocational training or other programs.

Recommendation 22: that institutions offer a wider range of vocational training programs with enrollment capacities equal to the training needs identified by the reception centers.

Recommendation 23: that institutions be enabled to purchase maintenance services when necessary, in order to utilize inmate labor only on the basis of available skills and interests or as a legitimate function of the rehabilitation program.

2. State-Use Industries.

Prison industry, or state-use industry, is another program in

which inmates theoretically receive useful training and work experience. At some institutions we visited, the state-use industry was the only formal training program available. At others, the industry program is not very formal; at Maine State Prison, for instance, there is no instruction at all associated with the industry program except as one inmate may teach his successor or co-worker.

State-use industries do meet certain needs, of course. Given the budget restrictions on the correctional system, some industries are able to produce goods and services for institutions more cheaply than they can be obtained commercially. By making these goods and services available to other state agencies as well, industries can often provide general savings to the state and increased income for the correctional system. These programs also meet the needs of some inmates who are not interested in training programs and yet would benefit from some source of income and some activity during the day.

While some industries appear to be marginal operations at best, others are quite successful. In contrast to the inadequate and obsolete equipment we observed in the training programs at one institution, the state-use industry there is modern and elaborate. After we were told by training instructors of repeated unsuccessful requests for new equipment, the industry supervisor told us confidently, "There's nothing I need; if I want something, I just order it."

The necessary emphasis on production often results in management attitudes which prevent utilization of the industry program for rehabilitation of inmates. Providing a meaningful work experience for a short-term inmate is less important in the industry context than investing instructional time in a life-termer who can continue to produce for the industry over a longer period of time. Providing skills for an inmate who then leaves the institution is considered a waste of supervisory manpower resources for the industry--in fact, rehabilitation and release of inmates hampers the industrial program by creating disruptive personnel changes.

The production syndrome in an enforced labor environment results in a static skill level for most inmates, since efficiency and convenience require that an inmate continue to use any skill he has rather than lose production time or consume instructional time in learning a new skill. Further, the high availability of cheap labor and the extensive absenteeism (for such activities as haircuts and showers and in commissary visits) have resulted in an over-staffing of the production line; when an inmate is absent for any reason, there is always a replacement available to keep the machine and the production line going, but when all the inmates assigned to one machine or one station are present, the extras simply stand around doing nothing. The industrial environment which results from these

factors is somewhat relaxed, if boring, and bears little resemblance to actual industrial conditions for which inmates should be prepared.

Institutional restrictions on industrial work constitute perhaps the greatest barrier to its use as a rehabilitative program. Unreasonable periods when inmates are not working (due to transfers, excessively long "orientation," absences for routine personal chores) and the short working day all contribute to the unsuitability of some inmates for industrial work and to the discrepancy between the state-use industry environment and that of private industry. In addition, government restrictions which prevent unfair competition with private industry also prevent development of industrial programs which might provide more relevant training for inmates.

State-use industries, as well as training programs, stand to gain effectiveness from recommendations we have already made for shortening the time between the inmate's commitment and his availability for work, for lengthening the workday, and for eliminating unnecessary absenteeism. In addition, we feel that state-use industries should be reexamined for their rehabilitative impact as compared with the dollar savings for goods and services produced. In some areas, it may well be more efficient in the long run to purchase these goods and services and to free inmates and the correctional system for their first order of business, which is rehabilitation. For those

industrial programs which may justifiably be retained as an integral part of the rehabilitation system, relevant training programs should be provided.

Recommendation 24: that state-use industries be re-examined for their relevance to the program of rehabilitation in the correction system and that the industries be re-designed to complement this program, providing on-the-job experience in work directly related to available training courses and providing an environment reflecting contemporary industrial standards in order to facilitate the transition of released inmates from prison training to stable industrial employment.

3. Scheduling: Year-Round and Short-Term.

We have commented previously on the limited amount of time available for training programs in institutional daily schedules--as little as four hours, with an additional loss of time for haircuts, showers, family visits, commissary, and Service Unit or Parole call-outs--and we have recommended that an attempt be made to observe a more standard eight-hour work day.

A similar problem exists with term scheduling. We have already noted the short sentences generally served by inmates and have recommended methods for reducing the amount of an inmate's time consumed initially in the institution before assignment to training or other rehabilitation programs. The problem of short sentences is compounded, however, by institutional commitments to a September-to-June program year comparable to the traditional academic year. The

concept is an anachronistic one for educational institutions, and it is totally irrelevant in the correctional setting. Our interviews suggested that the two-month "vacation" is not the result of planning so much as the result, again, of lack of sufficient funds for a year-round program; its timing meets inmate desires to be "off" and outside during good-weather months.

Whatever its causes, the two-month break results in a substantial loss of training time for inmates whose term of commitment happens to include that period. And, while the two-month period undoubtedly bolsters morale among inmates, we doubt that it contributes to good work habits any more than does the lengthy free period each afternoon.

Again, we recognize that our recommendation represents no revolutionary concept for correctional training programs; it reflects, in fact, the judgment of professional staff members in the correctional system. We hope only that our concurrence will support their requests for the funds necessary to carry out the effective rehabilitation effort which is increasingly expected of them by the public.

Recommendation 25: that year-round operations be adopted for training and education programs in correctional institutions.

Assuming that full use can be made of an inmate's time, effective short-term training programs are possible, as has been

demonstrated in several projects and studies.[61] One complicating factor, however, in addition to the time restrictions discussed above, is the random nature of entry to the system from the courts and of exit from it to parole or freedom; trials are completed and commitments are made throughout the year, and sentences vary greatly in length. Obviously, an effective program of education and training must be highly individualized. It is possible, and most desirable in the correctional context, to structure programs to allow for random entry and to allow for self-paced progress through a series of achievable goals. Such a system would enable the inmate to leave the institution at any point with at least some meaningful level of achievement attained. We found some commitment to these principles in the institutions we visited, but we found that staff members have little time and no financial resources with which to develop or purchase the necessary materials. In addition, we found that the shorter average period of time available for training has resulted in a lowering of goals--since the lack of time prevents the training of a mechanic, for instance, the program attempts only to train a filling station attendant. Advanced programs which might be offered for inmates with lengthier sentences or by those who are returned to the institution

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[61] Collins and Weisberg, "Training Needs," p. 6.

for additional periods for parole violation or commission of further crime have been dropped.

There are no rules or regulations which prevent the adoption of individualized instruction in correctional institutions; the problem, once again, is a lack of funds. Clearly, only such an instructional approach is compatible with the system, allowing for random entry and exit, emphasizing development of initiative on the part of the inmate, and providing sequential achievement units which can be combined to fit any length of sentence. It might well be an effective rehabilitative device to set achievement goals as a condition of granting parole.

Recommendation 26: that individualized instruction be adopted in vocational training wherever possible to allow for random entry and self-paced progress through a series of small, achievable units of increasingly sophisticated skill levels in each career field.

## C. RELATING TRAINING TO CURRENT INDUSTRIAL PRACTICE

### 1. Utilizing Training Instructors.

Vocational training programs cannot exist in isolation from the world of work for which they attempt to give preparation, and in our visits to institutions we repeatedly heard pleas from instructors for greater contact with related outside industries. We have commented already on the professional isolation of the staff at most institutions; that isolation is reflected also in the obsolescence of equipment and

techniques and in the discrepancy between the performance expectation of the training programs in the institution and the performance expectation in actual jobs on the outside.

The isolation of training programs from current practice in pertinent careers has been noted by other studies which have examined such programs more closely. In his report, "Lessons Learned From Vocational Training Programs Given in a Prison Setting," Associate U.S. Manpower Administrator Curtis Aller warned that the content of such programs must be tailored to actual employment standards in the community.[62] Similarly, the Abt report, evaluating MDTA programs in correctional institutions, called for a reexamination "to determine if they are relevant to the needs of the trainees and the employer, particularly with regard to duration, content, location, and quality of material, facilities, and equipment."[63]

One means of accomplishing this purpose is to increase the contacts between instructors in each field at various institutions and to

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[62] Aller, in Education and Training in Correctional Institutions (Madison, Wisc.: Univ. of Wisconsin Center for Studies in Vocational and Technical Education, 1968), p. 6.

[63] Abt Associates, Inc., An Evaluation of the Training Provided in Correctional Institutions under the Manpower Development and Training Act: Final Report Summary (Cambridge, Mass.: Abt Associates, Inc., 1971), pp. 17-18.

involve them more directly in the process of job development, placement, and follow-up. We have made recommendations in these areas in our discussion of staff needs, but it is perhaps necessary to call attention at this point to specialized placement programs. While we recognize the obvious need for professional placement services, we sympathize with those instructors who formerly attempted to provide such service and who now feel cut off from the enjoyment--and even knowledge--of the results of their training efforts by their exclusion from the placement and job follow-up process.

Recommendation 27: that vocational training instructors be informed of and involved as much as possible in the process of job development, placement, and job-related post-release services as a means of maintaining contact with the career fields for which they give preparation.

2. Trade Advisory Committees.

Another method of increasing the relevance of training programs to actual trades is through the establishment of Trade Advisory Committees composed of representatives of labor and management. Such committees were cited as an "essential factor" in an effective rehabilitation program by the American Correctional Association's 1966 Manual of Correctional Standards, which recommended that such committees be used to set training standards and to approve the

recognition of related work in maintenance categories.[64] Joseph Rowan, Executive Director of the John Howard Association, has noted the use of citizens' committees in the mental health field with the important added benefit of increased public support for institutional programs through the efforts of committee members.[65] One other advantage of citizen advisory committees is that they can be an important source of identifying manpower needs in the community and can help to direct the development of new programs more responsive to market conditions.

Despite commitment to the concept, as indicated in the 1968 annual report of its Division of Education, the correctional system in New York has had only one advisory council. That one was initiated by an employer and had excellent results, including improvement of the training program and a guarantee of jobs for a certain number of men released from the institution as graduates of the program. Unfortunately, the experience has remained an individual effort on the part of this one employer and the concept has not been extended to other fields.

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[64] Manual (Washington: The American Correctional Association, 1966), pp. 483-99.

[65] "Progressive Corrections," p. 74.

In Maine, a citizens' committee has been authorized by legislation for some time and was finally appointed in 1971 at the insistence of the state legislature. Its mandate, however, is quite general. While it will undoubtedly create increased public support for correctional programs and will be invaluable in recommending and facilitating needed adjustments in the general environment at Maine State Prison, it is unlikely to have a direct relationship to members of the training staff or to individual trades and training programs. This need should be met by the appointment of more specifically oriented committees.

Recommendation 28: that high priority be given to the establishment of trade advisory committees with representatives of management and labor to set standards for and evaluate vocational training programs, to identify employment opportunities, and to foster public understanding of and support for rehabilitation programs in the correctional institutions.

8. Apprenticeship Councils.

As a means of maintaining a positive relationship between training programs and related trades in the community, the American Correctional Association recommended in the 1966 Manual that state apprenticeship councils be used in an advisory capacity with regard to all maintenance, industrial, and other work or training programs in the institution.[66] These councils are able to supervise the

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[66] Manual, p. 497.

establishment of acceptable performance standards and can provide instructional outlines and materials. Perhaps most importantly, they can provide training programs with certification which is recognized throughout industry. In addition, these councils can generate public understanding of and support for correctional programs through their membership, which includes representatives of management, labor, and the public.

Apprenticeship programs are often limited to younger inmates--those between the ages of 17 and 26--but veterans may extend the upper age limit by the number of years of military service, and many programs have no age limit.[67] For eligible veterans, there are special opportunities: when they enter approved apprenticeship programs, they may receive a sizable monthly allowance through the Veterans' Pension and Readjustment Act of 1967--in addition to wages earned.[68]

Correctional institutions can give even short-term inmates a headstart toward enrollment in apprenticeship programs after their

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[67] New York State Department of Labor, Division of Employment, "Apprentice Training," n.d., p. 3; New York State Education Department and Department of Labor, "Entry Requirements in Registered Apprentice Training," (Albany, 1970), p. v.

[68] "Apprentice Training," p. 22.

release. Many programs give priority in their selection process to applicants with relevant technical training or work experience. The state apprenticeship councils can assist institutions in developing and certifying institutional jobs and training programs which will meet the standards required for admission priority to apprenticeship programs.

Apprenticeship councils exist in both Maine and New York--in the Department of Labor and Industry in Maine and in the Bureau of Apprentice Training of the Department of Labor in New York. Neither has been involved in developing or certifying programs in the correction system.

Recommendation 29: that state apprenticeship councils in Maine and New York be utilized by the correction system in each state 1) to develop training programs and establish appropriate performance standards in work programs which will meet certification requirements and 2) to serve as a liaison between correctional institutions and employers offering apprenticeship programs.

4. Private Industry.

Vocational training programs can also be made more relevant by involving private industry directly in program development and operation. A recommendation to this effect was made by the Joint Commission on Correctional Manpower and Training in its final report, A Time To Act.[69] In addition, J. W. Mullen, Jr., retiring

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[69] A Time To Act, p. 61.

chairman of the young lawyers section of the American Bar Association, has suggested that United States corporations be encouraged to emulate German firms in establishing training schools within correctional institutions which will lead to guaranteed employment upon release, and the Advisory Commission on Intergovernmental Relations has recommended that private industry be induced to operate actual branch plants in or near correctional institutions.[70]

While the development of such a concept is clearly beyond the scope of this study, we recognize that the involvement of private industry in rehabilitative programs might counteract some factors which currently operate as barriers to inmate training and post-release employment, such as the lack of continuity between training and employment and negative attitudes on the part of industrial employers toward hiring former inmates.

Recommendation 30: that officials of the correction systems in New York and Maine begin discussions with private industry and employers with regard to mutually beneficial programs to improve the training and rehabilitation of inmates.

5. Community-Based Programs.

Community-based correctional programming, as recommended

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[70] Mullen, "Lawyer Says: 'We're Responsible,'" p. 47; Advisory Commission, State-Local Relations, p. 60.

in the Manual of Correctional Standards, is no longer novel.[71] The President's Task Force on Prisoner Rehabilitation argued in 1970 that "community-based corrections is no visionary slogan but a hard contemporary fact; we support wholeheartedly the proposition that the community is the appropriate place in which to prepare offenders for useful participation in community life."[72] The Advisory Commission on Intergovernmental Relations was no less enthusiastic, as reflected in its report on the criminal justice system: "The Commission concludes that adequately financed, staffed, and supervised community-based treatment programs. . . can be more effective than institutional custody in rehabilitating most offenders and in facilitating their readjustment to society."[73] Both the Manual and the Advisory Commission note the possibility that community-based programs might be utilized as an alternative to institutional commitment for some offenders, with assignment to such programs directly from the reception center, thereby avoiding the harmful effects of

[71] Manual, pp. 135-48.

[72] The Criminal Offender, p. 7.

[73] State-Local Relations, p. 54.

institutionalization.[74] And U.S. Attorney General John Mitchell has recently endorsed the procedure of deferring prosecution for some alleged offenders in favor of immediate participation in community-based programs.[75]

In 1970, the Governor of New York signed legislation authorizing sentences of intermittent imprisonment for offenses punishable by up to one year in jail. Intermittent imprisonment allows an offender to retain his job, to live at home with his family, and to serve his time on weekends, evenings, or other specified times. This scheme is adaptable to problems of inmates with longer sentences as well; the concept is not totally unlike that of "halfway houses," except that constant residence in the institution or halfway house need not be a requirement as long as some specified time is spent there. The advantage to the system and to the inmate is that training and work experience which must now be provided by the institution can be provided instead in the more normal setting of legitimate industry and commerce, while the correction system has increased supervision of the inmate in the critical first few months of his return to society.

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[74] State-Local Relations, pp. 240-1; Manual, p. 148.

[75] "New Doors, Not Old Walls," p. 13.

No additional legislation is necessary to authorize extension of intermittent imprisonment to inmates with sentences in excess of one year. In both New York and Maine, parole boards have unrestricted authority to impose regulations and procedures as a condition of parole. Perhaps the only barrier to developing a flexible community-based program, other than the inevitable lack of funds and facilities, is the parole division regulation proscribing or limiting contacts between parolees or other ex-inmates. Such a provision might be entirely reasonable for certain offenders and can be easily imposed as a special condition. It seems to us that a blanket restriction, however, serves only to reduce the program options available to the department by excluding the development of a supportive community of offenders who are at various stages of adjustment to acceptable participation in legitimate society--parolees, inmates serving intermittent terms, releasees who voluntarily or by invitation continue association with the program, and those persons whose charges have been dropped on the condition of participation in the program.

The blanket restriction against association with other persons with a criminal record was recently dropped by the Division of Probation and Parole in Maine. The new parole form, however, allows for this condition to be imposed where there is need for it.

Recommendation 31: that high priority be given to the development of a range of community-based programs to facilitate the rehabilitation of offenders and their adjustment to society.

## D. INCENTIVES

### 1. Current Practices and Resources.

What meager incentives there are for encouraging rehabilitation among inmates in correctional institutions exist as little more than incidentals to training and educational programs. In fact, as Collins and Weisberg have suggested and as we found in our visits to institutions, some incentives actually draw inmates away from training programs and into low-skill jobs which ill prepare them for readjustment to society and help to guarantee their eventual return to the institution.[76]

In an environment which is stripped physically and socially to the bare essentials of life, small advantages can take on special significance in affecting behavior. Access to food can make the most menial of kitchen jobs more attractive than courses in computer programming when adequate food is otherwise denied. A job as cell-block messenger can carry with it enormous political and personal power if normal social organization and channels of information are denied. If acceptable methods of earning money (or other purchasing

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[76] Collins and Weisberg, "Training Needs," p. 7.

power) is denied, added significance can be given to jobs which offer opportunities to deal in black market goods and services such as yeast from the bakery or drugs from the infirmary. When relatively harmless personal needs are denied, even such items as hairstyles and flared trouser legs can take on black market qualities and create a demand for jobs as barbers and tailors. Any job which takes an inmate outside the walls, as we have mentioned before, has more than normal attractiveness if life otherwise is totally regimented and dreary.

We found all these negative incentives at work in the institutions we visited. At one New York facility where inmates spend only nine hours outside their cells each day and are locked in for the night at 5:20 each afternoon, those who work at the dairy barn are outside the walls of the prison from 6:00 a.m. until 7:00 p.m. Such intense incentive is thereby created for this work that inmates will drop even the most sophisticated and relevant training programs for an opportunity to work at the dairy barn--or to be a handyman at the superintendent's house, which position can lead to an assignment at the barn. Work at the superintendent's house has its own advantage, as well, since few inmates have any opportunity to be noticed by the superintendent, and his favorable notice can lead to an early parole.

The desire for release from the institution is undoubtedly strong

and is uniquely appropriate as an incentive for educational achievement, skill development, and general rehabilitation. At an institution in Maine, however, we found this incentive (and the desire for seven-days-a-week activity to combat boredom) leading inmates into low-skill jobs in the kitchen and boiler room, since the long work week in these areas provides special opportunities to earn "meritorious good time" and achieve an early parole.

We have mentioned other incentive factors operative in correctional institutions--notably, varieties of residential conditions and opportunities for leisure activities and free time. In general, however, as we noted, these incentives are utilized for institutional logistics convenience and for building morale as a function of custodial control rather than for training or other rehabilitative programs.

At best, inmates request training programs on the basis of anticipated employment possibilities, either through genuine interest in post-release employment or through a desire to increase the probability of early parole. Unfortunately, such choice must be based almost entirely on pure speculation or on the institutional grapevine since no placement records are available to the inmate or to the instructor.

One training program in New York has had outstanding success

in job placement--of forty or more graduates, all have obtained jobs in the trade for which they were trained. Many factors contribute to the continuing success of the program: the trade is a relatively new and growing one, so there is high demand for skills; employment is with small businesses, without restrictive union or personnel requirements; further, the instructor was formerly in the business and is able to use his contacts for placement of his graduates. Part of the success, however, is due to the fact that the instructor necessarily knows the placement record of his program and publicizes it to inmates, often bringing successfully rehabilitated ex-inmates back to the institution to advise and encourage others. The results are a long waiting list for the program, high effort in the program, and a general pride among participating inmates--pride both in the program and in themselves.

The Governor's Special Committee on Criminal Offenders in New York somewhat cynically included all the programs we have mentioned--education, vocational training, prison industries, and institutional maintenance and operations--as "programs that pass for rehabilitation" and noted that their goals are 1) to keep inmates occupied, 2) to reduce institutional costs, 3) to foster good work habits, and 4) to teach useful skills.[77] The Committee felt that the

[77] *Preliminary Report*, p. 200.

over-emphasis on the first two goals resulted partially from the fact that they were the only two which were measurable.

Actually, the development of good work habits and the learning of useful skills can be measured with varying degrees of accuracy. Work habits can be rated by instructors in relationship to general standards of performance and can be deduced indirectly from various personality inventories. Increasingly, trade skills are measurable by national norms; a thorough inventory of available tests was published in 1971 by Benjamin Shimberg and Joseph L. Boyd, Jr.: Directory of Achievement Tests for Occupational Education (Princeton: ETS, 1971). We feel that a comprehensive testing of these areas of program success or failure would be useful in planning and evaluation and that such information on an individual basis would be particularly useful to potential employers considering the applications of persons who have participated in prison training programs.

It is clear that the correctional systems in New York and Maine have the resources needed for offering certain incentives, both psychological and physical, which are not being provided to inmates in any comprehensive way. Some incentives for training programs are tied to recommendations we have already made with regard to related factors in the rehabilitative environment: day-long work and training programs as relief from enforced idleness and boredom and as an

inherently better schedule, achievement tests as validation of program goals and skills gained, training programs outside the walls of the institution, trade advisory councils and private industry involvement to develop job opportunities and relate programs to jobs, self-paced programs to allow an inmate to make full use of and strengthen his motivation to reach his rehabilitational goals, and a range of residential and security conditions in each institution to facilitate the system's response to progress or failure by an inmate without the necessity of disruptive transfers.

Recommendation 32: that existing incentives in the correctional institutions--incentives such as leisure activity opportunities, residential conditions, "outside" activities, "good time"--be reviewed and utilized more directly for training programs related to rehabilitation.

Recommendation 33: that correctional institutions in New York and Maine initiate a program of achievement and attitude testing to facilitate evaluation and planning in the rehabilitation program and to assist inmates in overcoming negative biases among potential employers.

Recommendation 34: that specific measurable objectives be established for those inmates for whom skill development is deemed appropriate in the reception center diagnostic evaluation and that progress toward release and toward other incentives short of release be related directly to progress toward the skill objective.

Without repeating recommendations already made, we want to re-emphasize that training must be directly related to actual employment beyond release, in order to be an effective rehabilitation

device, and that training programs must be perceived by inmates to lead to both release and employment in order to enlist their best efforts. These requirements can be met by utilizing trade advisory councils, apprenticeship councils, and private industry in identifying employment opportunities and by maintaining a record of employment success and making it available to inmates. This latter recommendation was made also by the Abt report on MDTA programs, "that trainees be informed of the potential impact of course completion on future success."[78]

2. Wages

An increasingly recurrent demand among inmates and others concerned with the prison system is for minimum wages for work done. It is important to note that the perception of the need for a minimum wage has not been limited to those who would benefit directly from it. Others have seen the establishment of standard wages and other working conditions as a potentially valuable ingredient in developing a rehabilitative environment--and therefore as a benefit to society at large. The President's Task Force on Prisoner Rehabilitation concluded that "the time has come for experimentation with a 'prevailing wages' or 'factory' prison . . . Arrangements might

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[78] Abt, Final Report Summary, p. 18.

be made for prisoners to support their families or to pay some of their wages towards the cost of room and board or, for that matter, in income taxes. Consideration would have to be given also to grievance procedures and collective bargaining in relation to working conditions . . . A factory prison must not be a 'sweat shop.'"[79] Joseph Rowan, Executive Director of the John Howard Association and former Deputy Commissioner of the Minnesota Department of Corrections, has also called for union or prevailing wage scales and has discussed how such a system can cost society less than the present system while greatly strengthening rehabilitation programs.[80]

Great care must be taken to structure wage scales appropriate to a correction system, however, rather than to a factory production system, for the fundamental justification for any work in prisons must be rehabilitation. Until fairly recently, inmates in some New York institutions were paid on a production basis--that is, inmates assigned to industrial or maintenance jobs were paid for their services, while inmates assigned to education and training programs received only "idle pay" of two cents per day. This system obviously resulted in a negative incentive for training programs, and illiterate

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[79] The Criminal Offender, p. 12.

[80] "Progressive Corrections," p. 73.

inmates who were required to participate in basic adult education programs rather than work--properly so, since literacy was an essential part of their chances for rehabilitation--were justifiably bitter at the enforced loss of income.

The pay scales have been equalized somewhat for all programs in New York. Students, shop trainees, industrial workers, and maintenance workers all have a base pay of 25 cents per day, and inmates for whom training or work programs are not available receive 20 cents per day. From the base of 25 cents, there are four pay grades ranging to $1.00 per day. The higher pay grades, however, are more accessible in industrial and maintenance programs, where skill or experience can be identified and rewarded with assignment to more responsible jobs, than in school and training programs in which only those inmates who become teaching aides can receive the higher pay. In addition, some industrial programs offer piece work incentives which are not available in other programs.

Several training programs offered in the New York system by private industry have experimented with financial incentives beyond those offered by the correctional system and have had notable success in improving inmate motivation. One such program pays participants $5.00 per week but also pays an additional amount directly to dependents of the inmates who are not on welfare. Another pays only

the prison wage but awards an expensive tool box upon completion of the program; so strong is this incentive, coupled with inmate confidence in the prestige of the sponsoring corporation and therefore in the program itself, that several inmates have requested permission to remain in the institution beyond their approved parole release dates in order to complete the program.

No wages at all are paid to inmates in the Maine system, except for those on work release at the Women's Correctional Center who are paid by their private employers. As compensation for the lack of any provision for income-producing work, inmates at the Maine State Prison are allowed to offer gift novelties for sale to tourists at a showroom near the institution. The limit on personal income from novelties is $2500 per year--far beyond what is possible on 25 cents per day--and institutional officials believe that informal arrangements between inmates result in even greater earnings for some. The novelty business has developed into a complex industrial and commercial system, with patents, contractors, and sub-contractors, and inmates are also involved in retail sales and stockroom management at the showroom. It is easily the determining factor in social organization within the institution and in inmate motivation. Sales income is paid to inmates in simulated money which becomes the currency exchange medium within the institution.

The novelty system at Maine State Prison allows for all the negative aspects of any commercial system--manipulation, exploitation, even extortion--without the checks and balances on such activities normally operative in a free market. Further it competes directly with more sophisticated and legitimate training programs which cannot offer comparable immediate financial or social rewards.

There are, however, some definitely positive aspects to the system. Inmates necessarily learn a great deal about the entire industrial process because they are running it themselves. They learn the importance of such intangible factors as interpersonal relations, and they learn the hard facts of the relationship between effort, production, and reward. They also learn at least the rudiments of contracting and accountability, of retail sales, of market appeal (especially since the expansion of the program into more individualized work and pricing), of stockroom management, and of Social Security and income tax procedures. Unfortunately, there are no formal programs in any of these areas to instruct or supervise inmates in correct and acceptable principles and procedures or to acknowledge or certify their accomplishments.

The novelty system has a tremendous impact on the programs and environment at the institution, yet its relationship to successful rehabilitation is not at all clear. We feel that it requires a very thorough

analysis and that steps should be taken to utilize its positive aspects, while preventing it from competing with other kinds of programs which prepare inmates for acceptable and productive lives in society in other vocations.

Recommendation 35: that high priority be given to the development of industry-based training programs in the correctional institutions of New York and Maine which will 1) provide goods and services to the state, 2) provide adequate wages for inmates and income to the system for continuing programs, and 3) provide employment-oriented work experience and training.

Recommendation 36: that wages prevailing in revised industrial training programs be applied also to educational and other training programs so that inmates are not penalized financially by assignments considered most appropriate for their rehabilitation.

Recommendation 37: that highest priority be given in the state of Maine to the provision of wages to inmates for work done and skills learned, 1) as an incentive to learn and produce, 2) as reinforcement for the development in each inmate of a perception of the dignity of work and of himself, and 3) as fair compensation from the society which benefits from the goods and services produced and, in the long run, from the skills learned.

Recommendation 38: 1) that the novelty system at Maine State Prison be carefully evaluated for its relationship to the rehabilitative purposes of the institution and 2) that formal instructional support be given to those aspects of creativity or financial management which have a positive bearing on the preparation of inmates for a return to a productive life in free society.

3. Better Communication.

One obvious barrier to the effective operation of incentives is the failure to communicate with inmates about rewards won or progress

made toward goals. In most institutions in New York, wages are credited to inmate accounts and may be drawn by the inmate only in goods or services. While the inmate never actually handles the money he has earned, he receives a regular wage slip indicating the amount of money credited to him. This simple reporting mechanism should be standard procedure.

In most institutions in both states, instructors and supervisors report regularly to the institutional administration on inmate progress in training, performance, and conduct. Despite the fact that good time or parole may be based on such reports, however, inmates are rarely advised on the content of their reports and consequently do not benefit immediately from the rewards or punishments implied in them. In at least one institution, an inmate may accumulate "extra good time" (time deducted from his sentence) for exceptional performance or conduct, but no information is given to him about "good time" gained or lost until his release, thereby negating the value of the incentive.

Recommendation 39: that regular reports be made to inmates on wages earned, on progress toward program goals, on "good time" awarded or denied, and on general performance and conduct, with explanations for any unusual positive or negative factors in the report.

## E. INMATE RIGHTS AS RELATED TO TRAINING PROGRAMS

There has been increasing discussion of the constitutional rights of inmates in correctional institutions. In his report for the Joint Commission on Correctional Manpower and Training, Fred Cohen noted movements of those in "a deprived or dependent status . . . to alter the social and legal consequences of that status" had developed among students, the mentally ill, and welfare recipients.[81] These groups, he reminded the Commission, had sought new relationships with their respective institutions with motives and methods which seemed likely to expand to the field of corrections.

Robert Kutak has detailed actions within the correctional field and in other areas since the Cohen report and reinforced Cohen's prediction of greater activity with regard to statutory and constitutional rights within state correctional institutions.[82] Russell Oswald, Commissioner of the New York State Department of Correctional Services, has also noted recent court decisions and indicated resistance on the part of correctional officials to accept court determinations

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[81] Cohen, The Legal Challenge to Corrections: Implications for Manpower and Training (Washington: Joint Commission, 1969), p. 9.

[82] Kutak, "From the Outside Looking In: Grim Fairy Tales for Prison Administrators," ABA Commission on Correctional Manpower and Training Bulletin no. 3 (August 1971), pp. 46-49.

of "what they have said are constitutional rights."[83]

We feel no imperative to add to the record our opinions on the rights of inmates, but we have an obligation in this study to comment on those aspects of the question which bear on training and potential employment. We have no argument with the necessity for institutional officials to have wide discretionary authority in maintaining control of what is by definition a difficult population. We do feel, however, that training programs are of sufficient importance to inmates--and to society, in terms of having offenders rehabilitated--that great care should be taken to insure fairness in excluding or removing anyone from these programs.

The courts have already begun to respond to this principle. In Sostre v. Rockefeller, 312 F. Supp. 863 (S.D.N.Y. 1970), the court awarded punitive damages to a minority inmate who had been placed in solitary confinement as punishment for his "militancy" and established procedural safeguards to govern his future treatment.[84] The problem strikes us as one which can potentially exclude a large number of minority inmates from training programs, especially given the

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[83] Oswald, "Society's Puzzle: The Paroled Offender," State Government 44, no. 2 (Spring 1971), 85.

[84] Kutak, pp. 42-43.

absence of minority personnel on boards and committees which review their activities. In our visits to institutions, we heard repeated reference to the removal of "militants and radicals" from shop training programs. While one institutional superintendent has equated "militancy" with revolutionary activity, we feel that the label is used more broadly but with no less fervor by other officials who have no frame of reference for understanding those minority inmates whose background is alien to theirs. A white senior correction counselor in one institution acknowledged to us his inability to comprehend the attitudes, language, and lifestyle of urban blacks committed to his prison and commented, "I can't help but feel they're in with the Communists."[85] His sentiment has sufficient potential negative impact on the opportunity of minority inmates to participate in training programs that victims of the sentiment should have some protection from it.

In the aftermath of the events at Attica, there has been discussion of assigning "hard-core militants" to one institution in which control and custody would be the primary concern, and we have recommended earlier in this report that some classification system, either among

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[85] The comment was made in the context of an eloquent statement on the need for minority staff and for instruction of white personnel in the sociological background on urban black inmates.

or within institutions, be adopted in order to relieve the great majority of inmates from the tyranny of a custody orientation not required by them. We have some concern about the method of assignment to maximum security units, however, since assignment would likely preclude participation in training programs. We feel that inmates should be protected from arbitrary assignment to isolated security units based on factors not reasonably related to the need for close confinement. Relevant factors should be the nature of the offense for which the inmate was convicted or the nature of his sentence and the nature of hostile acts committed within the institution and proscribed by it, but the determination of guilt for violations of institutional regulations should be accompanied by procedural safeguards satisfying due process standards, considering the seriousness of the results.

Current institutional treatment of inmates suspected of homosexual tendencies or acts is similarly devoid of even a modicum of due process. In some institutions, certain job or training assignments--generally the most desirable, those outside the walls--are denied to homosexuals, but there is no guarantee that the term is applied accurately. An inmate may not even know that his alleged homosexuality is the cause of his exclusion or removal from a program, and he has no means of denying the allegation.

Restrictions on correspondence also bear to some degree on the inmate's chances for employment. At one institution, relatives are allowed to send inmates only newspaper clippings of social events, weddings, and deaths (no "help wanted" or "positions available" clippings); magazines and newspapers must be approved by the Warden and sent to the inmate directly from the publisher--the most expensive way, since it requires a separate subscription for the inmate. It is no doubt a petty matter, but the regulation seems unnecessarily restrictive on its face and particularly so with regard to possible employment. At a minimum, the institution should encourage the free flow of information from home concerning advertised employment opportunities, whatever the source or form.

Similar problems were noted by Cohen: "One can recognize that prison administrators may possess valuable expertise and nevertheless suggest that a prisoner who is aggrieved by their decisions should have an opportunity for a fair administrative review."[86] He suggested adherence to the principle that "the greater the impact on the conditions of present or prospective liberty, or the physical and psychic integrity of the prisoner, the greater (or more plausible) the claim to substantive and procedural safeguards."[87]

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[86] The Legal Challenge, p. 80.

[87] Ibid., p. 78.

The President's Commission on Law Enforcement and Administration of Justice was equally concerned with the impact of institutional actions affecting inmates and recommended that correctional agencies develop explicit standards and administrative procedures to enable those under their control to test the fairness of key decisions affecting them. The Commission set minimum standards as including gathering and recording facts and providing for independent monitoring and review of the actions of correctional staff.[88] Decisions regarding assignment to or removal from training programs have a substantial impact on the inmate and on society's interest in his rehabilitation; these decisions clearly warrant the inmate's protection in the manner described. We recognize that such a requirement would place additional administrative burdens on an already over-burdened staff, but we have recommended increased staffing as a high priority, and we feel that government cannot legitimately plead inconvenience as a rationale for substituting administrative fiat for justice.

Recommendation 40: that disciplinary, classification, and other hearings and reviews which affect an inmate's opportunities for training be conducted in a manner consistent with principles of due process, both as protection for the inmate and as protection of the public's legitimate interest in his rehabilitation.

Recommendation 41: that regulations which restrict the receiving and sending of material related to employment opportunities be cancelled.

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[88] The Challenge of Crime, p. 181.

## IV. EMPLOYMENT

In the final analysis, the test of all the rehabilitative efforts of the inmate and of the correctional system is the ability of the inmate to find employment. For nearly all inmates, successful re-integration into the community requires a legal means of earning a livelihood, and the development of requisite skills and attitudes is the goal of all the training and work programs in the correctional institution. The tragedy for the inmate and for the system is that the employment process is too often rigged to defeat even their best efforts.

### A. LICENSING

State governments are guilty of a damaging hypocrisy in charging one agency with responsibility to rehabilitate convicted offenders, while acting through other agencies to deny employment to rehabilitated offenders in an ever-increasing number of career areas. But the state's activity is simply a reflection of attitudes in society-at-large, and the released inmate will most likely discover that, despite his best efforts at rehabilitation, he will remain forever in a prison without walls, physically free to move about yet shut off from normal

social interaction and shut off from the means of support for a normal, and legal, existence.

Successive commissions have recommended elimination of unreasonable blanket restrictions on the employment of ex-inmates.[89] Most recently, the Select Committee on Correctional Institutions and Programs in New York has included in its first report a proposal that "civil disabilities which severely limit employment opportunities for paroled inmates should be carefully reviewed and where possible modified or eliminated to assure maximum employability after return to the community."[90] For the most part, civil disabilities which restrict employment are not those imposed by the courts or the correctional system but are, instead, those imposed through regulations and practices by private employers, labor unions, and state governments through their licensing agencies.

State licensing restrictions constitute the most visible, most rigid, and increasingly the most comprehensive barrier to employment. There has been a steady procession to licensed status among a wide range of occupations since the initial licensure of physicians

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[89] See, for example, The Challenge of Crime, p. 77.

[90] Select Committee, Report No. 1. Mimeographed, 24 January 1971, p. 20.

and lawyers, and there is no indication that the extension of licensing has yet reached its terminal point.[91] The rationale for the requirement of licenses is that it provides the state with the means of protecting public health, safety, and morals through the regulation of occupations with significant impact on the public.[92] The rapid expansion of the practice, however, has resulted in an inconsistent pattern of requirements which defies application of the original principle.[93] In fact, licensing legislation has often been initiated by occupational associations seeking professional status or competitive advantage, rather than by the public seeking protection, and many licensing boards are composed only of members of the profession regulated by the board. Representatives of the public on whose behalf the regulating is presumably done do serve on some licensing boards, but they are nearly always in a minority role.

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[91] Vanderbilt Univ. School of Law, The Collateral Consequences of a Criminal Conviction (Nashville: Vanderbilt Law Review, 1970), p. 1163, suggests the possibility of eventual licensing of all occupations.

[92] The Collateral Consequences, p. 1162-63.

[93] Georgetown University Institute of Criminal Law and Procedure, "The Effect of a Criminal Record on Employment with State and Local Public Agencies," draft (Washington: Georgetown Univ. Law Center, 1971), p. 55, indicates that approximately 100 occupations are licensed in Maine and 150 in New York, including license requirements for individuals and for corporate businesses.

The authority of these boards as public agents derives from the state legislature under a variety of enabling laws, nearly all of which delegate broad discretionary power to the board. The authority is exercised through various state executive departments, presumably in accordance with general state policies, including the policy for rehabilitation of offenders. In a recent case, Bergansky v. State of New York Liquor Authority, Judge Arnold Fein cited Matter of La Greca Restaurant v. New York State Liquor Authority, 33 A. D. 2d 537, in support of his contention that the exercise of the licensing authority must be "consonant with the policy of the state to assist in the rehabilitation of persons convicted of crime."[94] The record shows, however, that the exercise of the authority is in large part not "consonant with . . . rehabilitation" and that few courts are willing to insist on the principle.

The broadest statutory authority for licensing is that which permits rejection of an application for lack of "good character" or specifically excludes persons guilty of "infamous crimes." Under the currently operative definition, the Wilson-Mackin definition, an "infamous crime" is any crime punishable by imprisonment in a penitentiary.[95]

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[94] "SLA Is Told to Give Felons 'A Fair Hearing,'" NYT, 30 November 1971, p. 51:7.

[95] The Collateral Consequences, pp. 958-59.

This definition makes "infamous crime" synonymous with "felony" under Maine and New York law and is applicable to offenses of all the inmates with whom this study is concerned.[96] The definition is drawn from two nineteenth-century cases--Ex Parte Wilson, 114 U.S. 417, 422-29 (1885), and Mackin v. U.S., 117 U.S. 348, 351-52 (1886)--which broadened the definition in order to provide a greater number of offenders with procedural safeguards of their Constitutional rights. Decisions which were intended to aid ex-offenders are in effect now being used to their detriment.

In most instances, legislative authorization is sufficiently broad to allow wide discretion to licensing boards to regulate admission to occupations and to exclude applicants for lack of good character or, even more nebulously, lack of satisfactory reputation as in the 1969 N.Y. Civil Service Law, Rules and Regulations, sec. 3.2. Some authorizing statutes, however, specify the crimes which may exclude an applicant from admission to an occupation, usually identifying law violations related to the occupation for which licensing is sought. For example, persons who have been convicted of receiving stolen property may be disqualified as junk dealers, or conviction for illegal possession

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[96] Me. Rev. Stat. Ann., tit. 15. sec. 451 (1964), and N.Y. Penal Law, sec. 10.00 (5) (McKinney 1967), ibid., pp. 1011-12.

of weapons may result in disqualification for guard duty. Even in these occupational areas, licensing boards are not restricted by the specification of offenses and have the implied power to exclude applicants on the basis of lack of good character even where it is not a statutory requirement, as the court ruled in Dorf v. Fielding, 20 Misc. 2d 18, 197 N.Y.S. 2d 280 (Sup. Ct. 1948). The courts have held further that a record of conviction is conclusive evidence of the absence of good character, as in Hawker v. New York, 170 U.S. 189 (1898).[97]

Sol Rubin has noted the inconsistency of applying "good character" requirements to applicants for licenses as barbers and taxicab drivers when similar standards are not required by law for major corporate executives. "Public morals do not appear to be protected by arbitrarily barring barbers' licenses to persons convicted of crime," he writes, "when persons managing companies rendering vital services are not barred by reason of criminal conviction, and the corporate franchises are customarily not lost, even where the conviction is a violation involving the basic function of the business or service (e.g., fraudulent advertising by an advertising agency, or adulteration of

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[97] The Collateral Consequence, pp. 1009-10.

food by a food processing corporation)."[98] There are other inconsistencies. Under federal law, 18 U.S.C. sec. 2385 (1964), a person convicted of advocating the overthrow of the government is disqualified from government employment for only five years; under New York General Business Law sec. 32 (McKinney 1968), a serviceman who feigns illness and receives a dishonorable discharge may be disqualified from a peddler's license for life.[99]

Benjamin Shimberg has noted an additional factor which operates indirectly as a barrier to licensing for ex-offenders and others.[100] Licensing applications may include requests for information on citizenship, advanced degrees, convictions, or other matters which are not relevant to any requirement but lead applicants to believe that they will be disqualified on the basis of their answers to these questions. Ex-offenders are particularly susceptible to this sort of discouragement because of their expectation of discrimination.

The most insidiously devious technique of state licensing agencies

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[98] Rubin, The Law of Criminal Correction (St. Paul, Minn.: West Publishing Co., 1963), p. 628.

[99] The Collateral Consequences, pp. 1012, 1015.

[100] Shimberg and John Moe, Final Report (Princeton: ETS, 1968), p. 74.

is the request on applications for arrest records. An arrest not followed by conviction is no evidence of wrongdoing, but the inclusion of the question on application forms nevertheless applies penalties for arrests in at least four ways. The first is in discouraging applications from persons with arrest records by implying that a clean arrest record is required. The second is in obtaining information which may be used as an indication of bad reputation, even though no conviction has occurred. If a person with an arrest record, but no conviction, answers the question in the negative because of these first two implications, he may then be disqualified for falsifying the application. Fourth and most reprehensible, the question is an effort to obtain information on juvenile legal difficulties despite laws which hold court action against juveniles not to be "convictions" and allow persons guilty of juvenile misconduct to answer "no" to questions of conviction. In short, state agencies are circumventing state law by the simple expedient of requiring former juvenile offenders to reveal "arrests" rather than "convictions." Such offenders for whom protection was granted in the "no-conviction law" may thus be disqualified on the basis of their arrest record or for falsification of the application.

In a very recent survey of state, county, and municipal employment practices, the Georgetown University Institute of Criminal Law and Procedure found that applications for employment at all three

governmental levels in Maine ask for arrest record, thus potentially discriminating against innocent persons who have been convicted of no crime, and thus circumventing the law of the State of Maine which seeks to protect juvenile offenders from employment restrictions.[101] In New York, state applications ask for conviction only, but thirteen counties and eight cities surveyed by the Institute ask for arrests.[102]

In the course of this present study, we received application forms for a representative selection of occupations for which a license, certificate, or registration is required in New York or Maine. Of 50 forms reviewed, 24 require information regarding arrests (e.g., billiard room employees and bootblacks in N. Y. C., horse trainers and jockeys in N. Y. and Maine, insurance agents in N. Y., longshoremen and stevedores in N. Y., and X-ray technicians in N. Y. and Maine); 14 others require information concerning conviction (e.g., barbers in N. Y. and Maine, security guards and private investigators in both states, insurance agents in Maine, cosmetologists in N. Y., and itinerant peddlers in both states). The remaining 12 require information only on qualifications related to the occupation (e.g., arborists and auctioneers in Maine, oil burner installers in N. Y. and Maine, and

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[101] "The Effect of a Criminal Record," p. 37.

[102] *Ibid.*, p. 38.

practical nurses and dental hygienists in Maine). In the case of the certificate for X-ray technicians, Maine has delegated the authority for setting requirements to a national professional association outside the state. The State requires certification by the American Registry of Radiologic Technologists, and that association requires applicants to submit information regarding arrests.

It is important to note that inclusion of questions related to arrests operates as a secondary discriminatory device against racial minority groups. The National Conference of Christians and Jews has noted the increasing numbers of persons with arrest records because of the turbulence of the past decade and the expanded practice of "preventive" arrests by police.[103] Since much of the difficulty has centered in urban ghetto areas, minority groups living in those areas are particularly vulnerable to arrest. Black people migrating to New York from the South are also more likely to have arrest records. No statistics are available for New York, but the California State Department of Employment has reported that fully half of the 8,000 job-seekers interviewed by one employment officer

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[103] Paul Sultan and Gerhard E. Ehman, The Employment of Persons with Arrest Records and the Ex-Offender (New York: National Conference of Christians and Jews, 1970), p. 25.

in the Watts area of Los Angeles had arrest records.[104]

The U.S. Civil Rights Act of 1964 prohibits discrimination on the basis of race. Through their licensing procedures, state agencies circumvent this law by discriminating against persons with arrest records, a disproportionate share of which is held by black people, and this discrimination is carried out even where the innocence of the arrested person has been established by the court. In a recent California decision, Gregory v. Litton Systems, Inc., 316 F. Supp. 401 (C.D. Cal. 1970), the court held that merely asking for arrest records may be discriminatory since substantially larger numbers of blacks than whites are arrested.[105] The court held further that the intent to discriminate is not relevant if discrimination results in fact. The use of an arrest question on employment applications in certain parts of the country would generally be interpreted as an intentional discriminatory device; we should not be less willing to recognize it as such in all parts of the country.

Some apprenticeship programs certified by the State of New York have similar provisions. As with licensing, we feel compelled

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[104] Ibid., pp. 23-24.

[105] Ibid., pp. 182-83.

to comment on this aspect of racial discrimination by the State, not only on moral grounds, but also because it bears directly on the ability of the correction system in New York to utilize job training and employment in the rehabilitation of its inmates who are members of minority groups. Article 23 of the New York State Labor Law states that apprentices in approved programs "shall be selected on the basis of qualifications alone, as determined by objective criteria which permit review, and without any direct or indirect limitation, specification, or discrimination as to race, creed, color, or national origin."[106] Yet six approved apprenticeship programs, all in the construction trades, are allowed to require proof that the applicant has no police record and to reject applicants who have records of arrest without conviction.[107] Further, a total of 337 programs are allowed to give selection advantage to applicants with superior "personal traits," such as ability to comprehend, interest and motivation, and ability to communicate, as identified in an interview--all subjective qualities which are likely to be most favorably noticed in applicants

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[106] NYS Department of Labor, Division of Employment, "From Novice to Craftsman--Through Apprenticeship," (1971); NYS Education Department and Department of Labor, "Entry Requirements in Registered Apprentice Training," (Albany, 1970), p. 17.

[107] "Entry Requirements," p. 11.

with racial and cultural qualities similar to those of the interviewer and the members of the trade.[108]

We believe that the problem of rehabilitation of offenders, especially in New York, is inextricably bound with problems of minority groups in general and that the racial and cultural aspects of the problem require the careful attention of the state, especially with regard to its own actions.

With regard to the general use of arrest records, the courts have held--as in Donnell v. Board of Registry of Medicine, 128 Me. 523, 149 A. 153 (1930)--that civil disabilities may not be imposed until appellate courts have rendered a decision on any appeal and have ruled that the rendering of judgement and imposition of sentence are necessary for conviction and consequent loss of rights.[109] It follows naturally that dismissal of charges, acquittal, or rulings which fall short of conviction should not have an adverse effect on employment or other opportunities of the defendant.

The New York Urban Coalition and a study sponsored by the Georgetown University Institute of Criminal Law and Procedure have recommended legislation prohibiting the use of questions about

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[108] Ibid., p. vi.

[109] The Collateral Consequences, p. 955 n.

arrest, restricting the release of arrest records, and permitting applicants with arrest records but no conviction to answer "no" to the question of arrest, without penalty.[110] We agree that legislation is necessary in order to deal with discrimination by employers.

A bill to amend the Civil Rights Law (sec. 17) of New York was introduced in 1971 by Senator Meyerson (S-207) and Assemblyman Melvin Miller (A-1302) which would prohibit the question, "Have you ever been arrested?" in applications for employment, either public or private.[111] We feel that such a regulation is in order and necessary but that it should be broadened to include secondary barriers to employment, such as state licensing requirements. We recognize that similar legislation concerning convictions for juvenile offenders is circumvented by state agencies in both New York and Maine and that many potential employers and licensing boards will find some means of obtaining the information, no matter what specific language is prohibited by the legislature or the courts. Information about arrests may be obtained through fingerprint traces already required for

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[110] Pauline Feingold, "Memo on Legislation Supported by the New York Urban Coalition," mimeographed (N.Y.: N.Y. Urban Coalition, 20 November 1971), p. 19; Georgetown Institute, "The Effect of a Criminal Record," p. 19.

[111] Feingold, p. 4.

some applications, through credit checks, or through interviews, without direct questions about arrest. What is needed, therefore, is legislation not only prohibiting questions about arrests but also prohibiting adverse use of the information should it be obtained otherwise.

Recommendation 42: that legislation be enacted in the states of New York and Maine 1) to prevent employers and licensing boards from asking for or acting on information concerning arrests not followed by conviction and 2) to restrain state agencies from releasing information concerning arrests not followed by conviction.

The range of occupational licensing and the fact that any license may be denied to any felon for any reason or no reason at all, provide little hope of success for rehabilitative efforts in the correctional system. Given the assumption that the rehabilitation of offenders is not only a humanitarian ideal but also a public policy with direct benefits to society, it is necessary to seek modifications in licensing and related employment practices in order to give rehabilitation at least a chance for success.

One frequently recommended means of relief for rehabilitated offenders is expungement of the criminal record. "One very specific way of easing an ex-offender's way through life," concluded the President's Task Force on Prisoner Rehabilitation, "is to make sure that

his criminal record is not permanently attached to him."[112] Expungement is also recommended by J. W. Mullen, Jr., retiring chairman of the young lawyers section of the ABA. Mr. Mullen has thoroughly examined the correction system and knows the problems of ex-offenders: "A man with a record--who's going to hire him? He has paid his debt to society . . . Why continue to punish him?"[113]

Citing the Model Annulment and Expungement Statute, the Georgetown University Institute of Criminal Law and Procedure has also recommended expungement and the sealing of records of expunged conviction.[114] The Institute and the Model Statute also recommend that applications for employment, licensing, or other advantage be limited to one question regarding criminal record: "Have you ever been convicted of a crime which has not been annulled or expunged by a court?"[115] The Institute recommends further that rehabilitated offenders whose conviction has been expunged be allowed to refuse to acknowledge the expunged conviction with immunity.[116]

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[112] The Criminal Offender, p. 24.

[113] "Lawyer Says: 'We're Responsible,'" p. 47.

[114] "The Effect of a Criminal Record," p. 91.

[115] Ibid. See also Cohen, The Legal Challenge, p. 87.

[116] Ibid., pp. 19-20.

There are serious flaws, we feel, in relying on expungement as protection from unreasonable discrimination against rehabilitated ex-offenders. As Barry Portnoy has noted, the expungement of convictions for youthful offenders has not been effective.[117] Since even sealed records continue to be used by law enforcement agencies, records remain public. Even without such "leaks," employers can require applicants to sign waivers permitting courts to release confidential information. Further, the courts have ruled in New York that the State has no inherent power over local police department records and cannot order those records sealed or withheld, 260 NYS 2d 2554 (1965). With the increasing effectiveness of private data collection and storage by credit firms and others, it is unlikely in any event that a criminal record could long be concealed.

Perhaps the most valid case against expungement is not its ineffectiveness but its inherent deceptiveness. Portnoy notes that expungement deprives an employer or others of the right to know the truth about those with whom they are dealing and requires the ex-offender to build his relationship on a lie.[118] The editors of the

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[117] Portnoy, "Employment of Former Criminals," Cornell Law Review, 55 (1970), 315-17.

[118] Ibid., p. 317.

Vanderbilt Law Review, commenting after a thorough consideration of legal problems for ex-offenders, noted the likelihood of unfavorable public reaction to concealment of criminal records and concluded: "Although there is much to commend a policy that permits a reformed offender to erase all records of his criminal past, the public will often have a justifiable need for this information. Much preferable to a system of concealment is one that enables the ex-convict to demonstrate to the community that he has been fully rehabilitated."[119] We agree, but only on the condition that the rehabilitated offender be guaranteed that information concerning his record will not be used against him unfairly.

We feel that the most honest and fairest approach to the problem is one which acknowledges the offense but allows the correction system to certify rehabilitation and requires recognition of the certificate. The latter point is especially necessary since current case law holds that certification of rehabilitation--or restoration of civil rights, as it is called--through certificates of relief or even through pardon does not impinge upon the authority of licensing boards to deny or revoke licenses because of the conviction, as in Papatheodore v. State Dept. of Liquor Control, 69 Ohio L. Abs. 556, 118 N.E. 2d 713

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[119] The Collateral Consequences, p. 1159.

(Franklin County Ct. C.P. 1954); Page v. Watson, 140 Fla. 536, 192 So. 205 (1938); Englander v. Florida Real Estate Commission, 228 So. 2d 415 (Fla. Dist. Ct. App. 1969); in Epstein v. California Horse Racing Board, 222 Cal. App. 2d 831, 35 Cal. Rptr. 642 (1963), the court ruled that even expungement of a conviction did not preclude an unfavorable decision based on the conviction.[120] Under these circumstances, expungement of convictions and restoration of civil rights are meaningless.

Model acts related to criminal law have included various provisions for the restoration of civil rights with consequent relief from disabilities:[121] 1) The Uniform Act on the Status of Convicted Persons (Commission on Uniform State Law, 1964) provides for automatic restoration of rights upon completion of parole, probation, or sentence, but does not require licensing boards to recognize the restoration. 2) The Model Penal Code (Proposed Official Draft, 1962) provides restoration within a range of 0-5 years after completion of sentence, depending on the nature of the offense; licensing boards are not restricted by this proposal in acting negatively on

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[120] Ibid. See also NY Governor's Committee, "Preliminary Report," p. 15, and Portnoy, "Employment of Former Criminals," pp. 313-14.

[121] The Collateral Consequences, pp. 1153-54.

conviction information they may receive, but offenders whose rights have been restored are permitted to deny the conviction. 3) The proposal of the National Council on Crime and Delinquency (1962) provides automatic restoration and annulment of the conviction upon completion of the sentence, parole, or probation, and limits licensing boards to application questions about convictions not annulled but does not restrict boards from using information about annulled convictions which they may obtain through other means. 4) The Standard Probation and Parole Act (National Probation and Parole Association, 1955) provides for restoration on release from prison or one year after completion of parole at the discretion of the parole board. 5) Finally, the Model Annulment and Expungement Statute proposes expungement and restoration upon release from parole supervision or two years after discharge from prison unless a court specifically approves continuation of disabilities beyond that time.[122]

A report of the Georgetown University Institute of Criminal Law and Procedure has recommended annulment and expungement upon request at discharge from probation, parole, or imprisonment unless specific court action permits refusal of expungement.[123]

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[122] "The Effect of a Criminal Record," p. 90.

[123] Ibid., p. 27c.

Editors of the study made for the Vanderbilt Law Review recommended automatic restoration of rights five years after release into society, with the court's option to restore them before that time.[124] In a similar recommendation, the National Commission on Reform of Federal Criminal Laws has proposed that federal employment disqualification be discretionary with the sentencing court and that any disqualification imposed by the court be removed automatically five years after completion of the sentence.[125]

In New York, civil disabilities and removed for first offenders by "Certificate of Relief from Disabilities" at the time of discharge from parole and for multiple offenders by "Certificate of Good Conduct" five years after discharge from custody.[126] Both certificates are issued by the State Board of Parole and may restore rights in part or in full at the Board's discretion. With regard to the minimum date for restoration of rights, the Governor's Special Committee on Criminal Offenders in New York noted provisons for restoration of rights five years after release but argued that "the intervening period

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[124] The Collateral Consequences, p. 1239.

[125] Ibid., p. 1015.

[126] Regulations and procedures are described in New York Urban Coalition, "How To Regain Your Rights," (1971).

is clearly the most critical in the rehabilitative process."[127] The New York Urban Coalition proposes reducing the time limit for a Certificate of Good Conduct from five years to two years, if there must be a limit, and making earlier use of it discretionary with probation and parole officers.[128] Steve N. Yelich, supervising parole officer in the New York State Department of Correctional Services, has also recommended that the agency charged with supervision and rehabilitation of offenders be enabled to restore rights in all cases with minimal eligibility requirements, provided the restoration is consistent with the rehabilitation of the offender and with the public interest.[129]

The restoration of rights and provision of relief from disabilities related to employment are important tools in the rehabilitation of offenders, and they should be available to correctional agencies as an option for application at the time of release of the inmate to society. We see no reason to distinguish between these agencies' discretionary authority to release inmates from prison on parole and their authority to restore rights and provide other support for integration of the

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[127] "Preliminary Report," p. 15.

[128] Feingold, p. 2.

[129] Yelich, "The Hidden Penalty," The Legal Aid Briefcase, 29, no. 2 (November 1970), p. 65. See also Cohen, The Legal Challenge, p. 86.

rehabilitated offender into society. We feel that the minimum sentence imposed on the inmate should also be the minimum period for civil disabilities and that the correctional agency should from that point forward be able to restore those rights which it feels would support the successful rehabilitation of the offender and remove those disabilities which it feels are detrimental.

With regard to maximum limits for disabilities, we see no reason and no justification for extending disabilities beyond the maximum sentence imposed by the court. In our system of criminal justice, the courts are charged with determination of appropriate penalties and sentences for offenses against the law, and the courts alone should be empowered to extend penalties beyond the period specified at the time of conviction. It may well be that the correctional agencies will feel that certain inmates have not responded satisfactorily to the rehabilitation program and that appropriate disabilities and losses of rights should be continued beyond the maximum period originally established by the courts. In such cases, the correctional agency should be empowered to seek a court order continuing the penalty.

In New York, the "civil death" statute which provides for forfeiture of public office and suspension of civil rights provides by implication for automatic restoration of rights at the expiration of the sentence--N.Y. Civil Rights Law, sec. 79 (McKinneys Supp.

1971). In the language of this Act, the civil rights of convicted persons are suspended, not forfeited, and they are suspended only during the terms of the sentence. The principle is acknowledged in the recent provision for automatic restoration of the right to vote upon completion of the maximum sentence or discharge from parole.

Maine has no "civil death" statute, and disabilities are incurred and rights lost only as a function of administrative convenience related to incarceration. Such disabilities should be removed and the rights restored when the reason for the denial ceases to exist. Despite the lack of a legislative or other mandate, some state officials have acted unilaterally to impose penalties on inmates beyond those imposed by the courts or legislature. For example, Article II of the State Constitution does not include felons or ex-felons among persons ineligible to vote, and Section 1251 of the Maine Code, which provides for absentee voting, does not exclude them from applying for absentee ballots. Nevertheless, an attorney general's opinion--1961-62 Atty. Gen. Rep. 183--prevents persons incarcerated because of a criminal conviction or criminal proceeding from receiving an absentee ballot. While not directly related to employment, this administrative action on the part of a state official tends to support other public agencies and private employers in imposing their own penalties beyond those imposed by law. As we have already stated, we believe that penalties for offenders should be limited to those imposed by

law or by the courts.

Recommendation 43: that legislation be enacted in New York and Maine 1) to make explicit the automatic restoration of civil rights and the removal of all civil disabilities for convicted persons upon expiration of the maximum sentence imposed at the time of conviction unless there is court action to extend the period of disabilities and 2) to make restoration of rights or removal of disabilities, in whole or in part, optional for convicted persons at the discretion of the respective state correctional agencies at any time after completion of the minimum sentence imposed at the time of conviction.

Several efforts are already underway to remove specific disabilities imposed on offenders by individual licensing boards. Arnold Hopkins, a member of the ABA's Commission on Correctional Facilities and Services, has said that the ABA will initiate through state bar associations legislative action to amend laws that prohibit certification or employment for ex-offenders through restrictive or unreasonable criteria.[130] In New York, the Urban Coalition is supporting such amendments but is limiting its efforts for practical considerations to those areas which involve the greatest number of jobs available to most ex-offenders: the Alcoholic Beverage Control, Civil Service, and General Business Law areas.[131]

We are not prepared to argue on the basis of this study that no

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[130] Corrections Digest, 3 November 1971, p. 9.

[131] Feingold, p. 3.

felon should be denied any license he might seek. We believe, however, that exclusions ought to be reasonably related to the particular license sought and that rehabilitated offenders should not meet arbitrary and unreasonable discrimination on their return to society.

Recognizing the principle that rehabilitation is in the best interests of society as well as of the offender, the editors of the Vanderbilt Law Review have recommended that the laws regulating licensed occupations and public employment be revised "to insure that individuals are not unduly prejudiced by reason of past criminal conduct. Unreasonable and undesirable results can be avoided only by expressly limiting exclusion from occupations to criminal conduct indicative of unfitness for the particular occupation."[132] They also felt that licensing and public employment agencies should be required to give full consideration to evidence of rehabilitation.

While exhibiting extreme reluctance to interfere with the decisions of licensing boards, the courts have given some support to the principle of reasonableness in reviewing rejections for criminal records.[133]

[132] The Collateral Consequences, p. 1167.

[133] Ibid., pp. 1004 n., 1006, 1010. See also Cohen, The Legal Challenge, p. 83.

As in Dent v. West Virginia, 129 U.S. 114 (1889), the Supreme Court has consistently ruled that states cannot, under the guise of protecting the public, arbitrarily deny access to lawful occupations by imposing unreasonable restrictions. And the courts have occasionally ordered consideration of an offender's rehabilitation, as in Tanner v. DeSapio, 2 Misc. 2d 130, 150 N.Y.S. 2d 640 (Sup. Ct. 1956), the recent case of Bergansky v. State of New York Liquor Authority, and Otsuka v. Hite, 64 Cal. 2d 596, 414 P. 2d 412, 51 Cal. Rptr. 284 (1966). In another recent case, Griggs v. Duke Power Co., 401 U.S. 424 (1971), the U.S. Supreme Court reaffirmed its commitment to a principle of reasonable job-relatedness in employment requirements as it had earlier in Schware v. Board of Examiners, 353 U.S. 232 (1957).

Carter v. Gallagher, ___ F. Supp. ___ [3 EPD, par. 8205], affirmed 452 F 2d 315 (8th Cir. 1971), includes similar considerations. Confronted with a number of allegedly discriminatory civil service regulations, one of which barred any person with an arrest or con- viction record, the Court concluded:

> [illegible] ally since no distinction was made between types of crimes, no consideration was given to the length of time which elapsed between the conviction and the application, and no effort was made to determine what convictions reasonably can be said to constitute a bar to employment as a fire- fighter.

Guidelines of the Equal Employment Opportunities Commission and the Office of Federal Contracts Compliance also prohibit the use of irrelevant criteria in employment decisions, since irrelevant criteria can become secondary devices of discrimination against members of minority groups who would otherwise be protected by the Civil Rights Act of 1964.[134] This is particularly true of criteria concerning arrest and conviction, since a disproportionate number of minority individuals have such records. We do not know that the use of irrelevant criminal record criteria by state licensing boards in New York and Maine is intentionally discriminatory, but the courts have ruled against similar regulations which were discriminatory in fact, without regard to the intention--Gregory v. Litton Systems, Inc., 316 F. Supp. 401 (C.D. Cal. 1970).[135]

The rationale for legislation requiring a direct relationship between offenses for which persons can be excluded and the occupation for which licensing is sought was provided in the Vanderbilt study:[136]

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[134] United States Equal Employment Opportunity Commission, "Guidelines on Employee Selection Procedures," reprinted from Federal Register, 35 (August 1970), 12333-36. See also U.S. Office of Economic Opportunity, "Employment of Persons with Criminal Records," OEO Instruction, 4 January 1971.

[135] See discussion above, p. 102.

[136] The Collateral Consequences, p. 1238.

> The Agency would be required first to determine whether an individual's criminal offense demonstrates unfitness to participate in the licensed occupation or activity. Secondly, the agency would determine whether substantial risk of harm to the community will result unless the license is denied, suspended, or revoked. In reaching its decision, the licensing board should be required to consider such additional factors as the individual's preconviction record, the nature and circumstances of the crime, his in-prison vocational training and conduct, and his post-release record.
>
> The agency should be required to provide the convict with a detailed explanation of the reasons for its decision. This requirement will both force the licensing agency to give careful attention to the criteria mentioned above and provide the applicant with information to judge the advisability of an appeal. The licensing agency should also furnish the convict with a description of the appropriate appellate and restoration procedures.
>
> A trial de novo should be available to an individual suffering an adverse decision from a licensing agency. This new trial will permit an objective determination . . . Moreover, an expanded scope of judicial review will likely prompt licensing agencies to apply the direct relationship test justly so that convicted criminals will be denied occupational licenses only in those few cases where protection of the public clearly requires it.

Such recommendations have been made by a wide variety of observers of and participants in the correction system. Steve Yelich, supervising parole officer in New York, has called for elimination of all disabilities which are not required for protection of the community.[137] Fred Cohen, in his report for the Joint Commission on

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[137] "The Hidden Penalty," p. 66.

Correctional Manpower and Training, recommended legislation providing that "no civil or political right is to be lost unless the right is reasonably related to the nature of the offense and the function to be performed, or is required in the execution of the sentence."[138] Similarly, Sol Rubin has written in The Law of Criminal Correction that "a license should be granted where, on the basis of reasonable test or proper qualification, the applicant is proved competent to perform the duties and responsibilities of the license."[139]

It seems unnecessary and undesirable to specify rigidly in legislation the criminal offenses which may result in exclusion from licensed occupations. Rather, we would prefer legislation which protects the discretion of the licensing board in reviewing individual cases and yet protects the offender by providing judicial review of any adverse decision.

Recommendation 44: that existing licensing legislation in New York and Maine which provides for blanket exclusions of persons convicted of criminal offenses be amended to provide for 1) exclusion of persons whose criminal conviction demonstrates specific unfitness directly related to the occupation for which a license is sought, 2) consideration of the nature and circumstances of the offense and conviction and of evidence of rehabilitation as related to the occupation for which a license is sought, 3) notification to the applicant of the reason for

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138 The Legal Challenge, p. 84.

139 The Law of Criminal Correction, pp. 627-28.

which the license is denied and of the procedure for appeal, and 4) a trial *de novo* on the merits of the application and decision.

There has been some progress in testing the constitutionality of continuing disabilities imposed on offenders, but the courts have in general been hesitant to disturb the authority implicitly delegated to licensing boards by legislation. After thoroughly reviewing the record of suits brought on adverse licensing decisions, the *Vanderbilt Law Review* study concluded that, while some individual cases might be successful, it is unlikely that the courts will grant general relief through challenges to the constitutionality of civil disabilities as bills of attainder, cruel and unusual punishment, violations of due process, or violations of equal protection guarantees.[140] Both the Vanderbilt study and the *Cornell Law Review* study by Barry Portnoy cite numerous cases in which the courts have refused to overrule license refusals based on felony convictions.[141]

Some relief may be available through existing federal legislation, especially the Civil Rights Acts. *Hornsley v. Allen*, 326 F. 2d 605, 612 (5th Cir. 1964), holds arbitrary action by licensing authorities to

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[140] *The Collateral Consequences*, pp. 1184-1218.

[141] *Ibid.*, p. 1011; Portnoy, pp. 309-10.

be a violation of civil rights cognizable in federal courts, and Gregory v. Litton Systems, Inc., 316 F. Supp. 401 (C.D. Cal. 1970), prohibits regulations on superficially unrelated factors which in practice adversely affect members of minority groups.[142] The American Correctional Association's Manual of Correctional Standards notes that an advantage of bringing suit under this federal legislation is that state remedies do not have to be exhausted before seeking relief in U.S. courts.[143]

It is apparent, however, that reliance on existing legislation is shaky and uncertain at best. Further, the legislation which we have recommended may eliminate de jure discrimination against rehabilitated offenders but will not necessarily reduce de facto discrimination against them. More direct and positive legislation is required.

From time to time, proposals have been advanced for federal legislation prohibiting arbitrary discrimination on the basis of criminal records. Various objections have been raised, most notably the anticipation of negative public reaction. The most thorough discussion

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[142] The Collateral Consequences, p. 1005.

[143] Manual, p. 275. See successful suits brought also on similar provisions of the equal protection clause of the Fourteenth Amendment: Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); Bolling v. Sharpe, 347 U.S. 497 (1954); Shelly v. Kraemer, 334 U.S. 1 (1948); Hawkins v. Town of Shaw, 437 F. 2d 1286 (5th Cir. 1971); Norwalk CORE v. Norwalk Development Agency, 395 F 2d 920 (5th Cir. 1968); Carter v. Gallagher, ____ F. Supp. ____, aff'd 452 F. 2d 315 (8th Cir. 1971).

of such a law is provided by Harry Portnoy.[144] He proposes an anti-discrimination law which would permit an employer or licensing board to reject an applicant on the basis of a relevant criminal past but would give the rehabilitated offender some realistic hope of employment and give him a means of combatting unreasonable prejudicial discrimination. He notes that such a law might not necessarily be politically inexpedient, citing the Harris poll which showed 60 percent of the respondents to be aware of the problem and not averse to change and citing society's financial stake in rehabilitation and reduced recidivism.

Portnoy cites the law prohibiting age discrimination as a relevant analog.[145] The law allows for discrimination based on a reasonable relationship between age and occupation but places on the employer the burden of establishing exceptions to the general rule of employability. He views the law prohibiting discrimination by age or sex as establishing "an overriding rationale for these groups which requires that they be employed even when it is reasonable to discriminate against them" and suggests that the national interest in crime prevention and the reduction of recidivism might similarly

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144 "Employment of Former Criminals," pp. 306, 319-20. See also Rubin, The Law of Criminal Corrections, p. 639.

145 Ibid., p. 318.

require that employment discrimination against rehabilitated offenders be outlawed. Portnoy acknowledges the fundamental difference between sex and age, as being beyond self-determination, and criminal conduct, but he argues that "the justification for discrimination along the lines of such a distinction . . . looks toward retribution rather than rehabilitation."

The prospect for meaningful success in our correctional and rehabilitation programs under current conditions is dim at best, and the examination of the system in the context of our societal biases is depressing. After a thorough review of factors which operate as barriers to the employment and rehabilitation of offenders, we are convinced that a patchwork amendment of rules, regulations, and laws will not materially affect the system and its chances for success. What is needed, if we are to be serious about the correction of offenders, is sweeping legislation to prevent unreasonable discrimination based on previous conviction and to provide the only natural and successful conclusion to rehabilitation programs—the offender's employment and assimilation into a normal, acceptable, and productive life.

Recommendation 45: that urgent consideration be given to legislation in New York and Maine preventing arbitrary and unreasonable discrimination which is based on criminal convictions not directly related to the opportunity or benefit sought, or on convictions expunged by the courts, and which fails to take into consideration such relevant factors as the nature of the offense and conviction, length of time since the conviction occurred, and evidence of rehabilitation.

## B. CIVIL SERVICE

"When it comes to providing jobs outside [for inmates]," wrote the President's Task Force on Prisoner Rehabilitation, "those very entities that are responsible for rehabilitating prisoners--the states and the Federal government--set a most unedifying example."[146] Despite similar sentiments reflected in statements to us by former inmates and by officials of correctional institutions, however, there is little hard evidence to substantiate claims of reluctance on the part of state agencies to hire persons with records of convictions. This report does not confirm or deny discrimination against ex-offenders in public employment in New York and Maine; relevant information simply does not exist.

Whatever the actual record of public employment of former inmates, the civil service system allows for their exclusion through discretionary authority exercised by a range of officials from examiner to employer. In both New York and Maine, civil service examiners [illegible] to exclude persons with [illegible] [illegible] of the State of New York provides (Art. 5, sec. 6) that "appointments and promotion in the civil service . . . shall be made according to

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[146] *The Criminal Offender*, p. 10.

merit and fitness, to be ascertained . . . by examination," but the State Civil Service Law (Art. 4, Title A, sec. 50. 4d) provides that state and municipal civil service departments and commissions "may refuse to examine an applicant or, after examination, to certify an eligible who has been guilty of a crime or of infamous or notoriously disgraceful conduct." Similarly, the Personnel Law of Maine (Chap. 63, RS 1954 as amended, rule 6.4d) provides that "the director may reject the application of any person for admission to an examination or decline to examine an applicant who has been adjudged guilty of a crime involving moral turpitude, or infamous or disgraceful conduct . . ." Appeal procedures are provided, but there is no standard by which a decision based on criminal conviction may be reviewed. Further, admission to the exam and successful completion of it results only in the applicant's being placed among several candidates from which potential public employers may choose. The final decision in the selection process may be entirely arbitrary; there is no notification of the reasons for the decision and no remedy for an unfavorable decision.[147]

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[147] Civil service regulations are reviewed in Georgetown University Institute of Criminal Law and Procedure, "The Effect of a Criminal Record," Appendix H (draft).

Several recent reports have noted an improvement in treatment of ex-inmates by public employment agencies at the state and federal levels,[148] and continuing litigation promises to provide grounds for review of future decisions adversely affecting applicants with criminal records.[149] These laudable developments can be strengthened and made permanent by implementation of recommendations we have already made in this report, especially those regarding legislation prohibiting the use of information related to arrests not followed by conviction, revision of existing legislation to permit rejection only of those applicants whose criminal offense is directly related to the position or other advantage sought, and legislation to prevent the use of discretionary authority in discrimination based on criminal convictions not related to the opportunity sought or failing to consider evidence of rehabilitation. (See Recommendations 42, 44, and 45.)[150]

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[148] Joint Commission on Correctional Manpower and Training, Offenders, p. 55; Vanderbilt Univ. School of Law, The Collateral Consequences, pp. 1016-17. For current practices of the U.S. Civil Service Commission, see Employment of the Rehabilitated Offender in the Federal Service (Washington: GPO, 1971).

[149] Esp., Carter V. Gallagher, ____ F. Supp. ____, affirmed 452 F. 2d 315 (8th Cir., 1971). See pp. 117-18, above, and Appendix A.

[150] Specific means for overcoming barriers to licensing and/or public employment of ex-offenders are discussed in Appendix A.

In contrast to the civil service and public employment personnel provisions in New York and Maine, the United States Civil Service Commission has provided grounds for review of adverse decisions by specifying the criteria by which conviction records must be judged:[151]

> Suitability examination will take the following factors into account.
> a. Nature and seriousness of the offense.
> b. Circumstances under which it occurred.
> c. How long ago it occurred.
> d. Age of the person when he committed the offense.
> e. Whether the offense was an isolated or repeated violation.
> f. Social conditions which may have contributed to the offense.
> g. Any evidence of rehabilitation demonstrated by good conduct in prison and/or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, and the recommendations of persons who have or have had the applicant under their supervision.
> h. The kind of position for which the person is applying.

These guidelines for the federal civil service provide for continuing exercise of discretionary authority by responsible officials, but they also provide for impartial review of the decision. Only in such circumstances can the treatment of offender-applicants on their individual merits be meaningful and fair.

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[151] Employment of the Rehabilitated Offender in the Federal Service (Washington: GPO, 1971), p. 2.

Recommendation 46: that the New York Civil Service Law, Art. 4, Title A, sec. 50.4d and the Maine Personnel Law, Chapter 63, RS 1954 as amended, rule 6.4d, be amended to provide for exclusion from examination or refusal to certify only those persons whose criminal record renders them demonstrably unfit for the particular position sought.

Recommendation 47: that guidelines of the United States Civil Service Commission for evaluation of conviction records to determine fitness for public employment be adopted as standards for similar evaluation in the states of New York and Maine.

## C. PRIVATE EMPLOYMENT

It is impossible to determine the extent of discrimination against ex-offenders by private employers. No records of rejected applications are kept by correctional agencies, and records kept by employers are not available for examination. Further, as with public employment, discrimination practiced by private employers is most likely effected, not through company policy, but through the less visible activity of those who exercise discretionary authority for the company in the area of personnel.

Barry Portnoy has cited a 1946 survey of employers in New York City in which 65 percent of the respondents stated unequivocally and as a matter of policy that they would never hire a released offender.[152]

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[152] "Employment of Former Criminals," p. 307.

In our own survey in early 1972 of the largest employers in the New York area, only one company would acknowledge such a policy; all the others professed willingness to consider the individual merits of each case and to give ex-inmates a reasonable chance at employment. Despite this improvement at the "official" level, however, there is no guarantee that the enlightened attitude of top corporate officers and policy-makers is relfected in the day-to-day decisions of employees directly responsible for implementing policy, as Paul Sultan and Gerhard Ehmann noted in their study for the National Conference of Christians and Jews.[153]

Personnel officers must reject a large number of applications, especially in the current economy in which applications drastically exceed available positions. These officers are not likely to appreciate the subtleties of a shift in policy which nevertheless permits them to continue the provisions of the former policy; the least risky and most convenient procedure for them is simply to continue disregarding applications of persons with a record of arrest or conviction or with any other indicator of past instability or difficulty. In the context of the problems of minority groups, the abolishment of segregation *de jure* often had little impact on segregation *de facto*; it was

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[153] *The Employment of Persons with Arrest Records and the Ex-Offender*, p. 24.

necessary to follow policy changes with "affirmative action plans." It now appears that the difficulty encountered by ex-inmates in seeking private employment results more often from continuing discrimination de facto than from discrimination de jure or by corporate policy or regulation.

Some unfair and unreasonable discriminatory regulations remain. One major corporate employer in the New York area admitted, in response to our questionnaire, that applicants are asked on the application form and in interviews for information regarding arrests and conviction and that no applicant with any such record, even of arrests not followed by conviction, is eligible for any job at any level in the company. Another company indicated that an arrest record is a "somewhat negative" factor in an employment application. We have argued for legislation preventing adverse licensing decisions based on information regarding arrests not followed by conviction on the grounds that such decisions are 1) patently unfair to persons who have not been judged guilty of any criminal offense, 2) most likely discriminatory toward members of minority groups, and 3) subversive of public laws designed to annul juvenile convictions.[154] These same principles apply to the use of arrest records

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[154] See pages 98-106, above, and Appendix A.

by private employers in evaluating potential employees, and we feel that it is in the general public interest that such practices be proscribed by law.

Recommendation 48: that legislation advocated in Recommendation 42, prohibiting public employers and licensing boards from asking for or acting on information regarding arrests not followed by conviction, be extended explicitly to regulate employment practices by private employers authorized to conduct business in the states of New York and Maine.

The President's Commission on Law Enforcement and the Administration of Justice reported that 75 percent of the employment agencies surveyed in the New York City area stated that they required applicants to give information concerning arrests and that, as a matter of regular procedure, they would not refer any applicant with an arrest record, even if the arrest was not followed by conviction.[155] Obviously, legislation prohibiting adverse employment decisions based on arrest records will not benefit applicants who are thus screened from the employment process by referral agencies. Specific legislation must be enacted to eliminate this secondary discriminatory device.

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[155] Challenge, p. 75. See also Sultan, Employment of Persons with Arrest Records, p. 23.

Recommendation 49: that legislation be enacted in New York and Maine prohibiting employment referral agencies from asking for or acting on information regarding arrests not followed by conviction.

Legislation can prevent explicit and overt discrimination against ex-offenders at the policy-making level; it can do little to counteract the practical discrimination resulting from entrenched attitudes at the operational level. These attitudes can be changed, however, by campaigns directed at personnel officers and at the public. Errol Beharry, first director of the Watts Parole Placement Unit in south central Los Angeles, has noted that "the negative feeling toward parolees is not nearly as bad as it used to be; employers today are willing to take a chance."[156] There is significant information on which to base a campaign to take advantage of this receptiveness. In its study of employment of ex-offenders in public agencies, the Georgetown University Institute of Criminal Law and Procedure compared work characteristics of employees who had criminal records with employees who had no records. Almost uniformly, ex-inmates were rated "the same as" other employees; on "initiative," ex-inmates were rated higher than other employees. In the one institution we visited which had significant experience with work-release

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[156] "Placing Parolees," Manpower 3, no. 9 (September 1971), 26.

programs, the Women's Correctional Center in Maine, officials reported a positive reaction among private employers who have been increasingly cooperative with the program because of their recognition of the high dependability and motivation of the inmate-employees. The superintendent of another institution reminds potential employers that they can know a great deal more about a released inmate and his level of rehabilitation than they can know about potential criminal tendencies of other applicants.

The assumption that private employers are receptive to an employment campaign on behalf of ex-inmates is confirmed by responses to a survey of major employers in the New York area conducted in the course of this study. Of twelve responses to the questionnaire, eight indicated that the company regards a conviction record as a "neutral" factor in the application for employment. The responses from two companies indicated that a conviction record can even be a "somewhat positive" factor under certain circumstances; both companies have initiated "affirmative action plans" for ex-offenders at the request of private groups interested in the welfare of ex-inmates. Of the twelve respondents, however, seven indicated that they had rarely or never been contacted by representatives of correction agencies on behalf of inmate applicants. Only three of the twelve responding companies regularly request information and records from correction officials with regard to applications from former inmates.

We have commented earlier on the need for additional staff members in all phases of the correction process. Certainly, there is a critical need for increased staff support at the point of the inmate's re-entry into society, especially with regard to assistance in obtaining employment. An effort should be made to reach potential employers with information stressing the positive aspects of hiring ex-inmates, emphasizing such factors as the favorable characteristics identified in the Georgetown Institute study, and stressing the positive impact of the employment of ex-inmates in reducing recidivism and improving the general social environment.

Nearly all major employers now have officers responsible for advising the corporation on its activities in areas of social concern. In personnel relations and employment practices, they are often concerned with problems of minority groups and the hard-core unemployed, problems which are related to those of persons with records of criminal conviction. These officers have the means of changing company policy and, more important, of changing attitudes within the company, and their assistance should be sought for creating additional opportunities for ex-inmates among major employers and for utilizing the normal employment function of private businesses in a role cooperative with and supportive of the state's rehabilitation programs.

Another source of support within private companies is the personnel staff directly responsible for employment decisions. We have discussed how training programs in the correction system can benefit from the involvement of private citizens in "trade advisory committees," through direct advice on the operation of the program and especially through the increased understanding of the program and sympathy with its goals on the part of the committee members. Similar advisory committees on the job placement function of the correction system could have the same effect of improving the placement services of the system and, at the same time, fostering greater understanding of the goals of the correction system and greater receptivity to rehabilitated inmates in private employment.

Recommendation 50: that officials of the correction systems in Maine and New York, through individual contact or formal working conferences, communicate to officers responsible for corporate social concerns the goals and needs of the state's rehabilitative programs and enlist the aid of these officers in utilizing corporate hiring capabilities in reducing criminal recidivism and in preventing further acts of crime.

Recommendation 51: that personnel and employment officers of private corporations and of employment referral agencies be asked to serve on committees to advise the correction agencies on job placement services for inmates, to assist in identifying employment opportunities, and to foster increased understanding of and support for rehabilitation programs in correctional institutions.

In our survey of major employers in the New York area, it became clear that ex-inmates are often denied jobs for reasons beyond

the control of the employer. Employment of persons with criminal records may violate security conditions specified by the U.S. Department of Defense or other agencies contracting with the employer,[157] may jeopardize a business license or violate regulations of the licensing board, and may jeopardize insurance or bonding coverage.[158] We have already noted, in addition, that referral agencies may refuse to forward to the employer applications of persons with criminal records.

We have not included bonding as a separate part of this study because it has clearly become a less significant barrier to employment. The experience of the Labor Department's demonstration program, under Section 105 of the MDTA Manpower Administration Order 2-65, has indicated that individual bonding can be obtained for almost all ex-inmates, often through commercial bonding companies. The problem can be somewhat more complicated, however, for large companies with comprehensive agreements with commercial bonding

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[157] See also: Daniel Glaser, Eugene S. Zemans, and Charles W. Dean, Money Against Crime: A Survey of Economic Assistance to Prisoners (Chicago: The John Howard Association, 1961), p. 25; Portnoy, "Employment of Former Criminals," p. 310; Vanderbilt Univ. School of Law, The Collateral Consequences, p. 1016.

[158] Difficulties encountered by ex-inmates in life insurance, pension plans, and workmen's compensation benefits are discussed in The Collateral Consequences of a Criminal Conviction, pp. 1109-43.

companies. Further, as Paul Sultan and Gerhard Ehmann have noted, the suspicion is raised that "many employers are using fidelity bonding requirements as an excuse not to hire people they would rather not hire for other reasons."[159]

Few of these barriers to private employment of ex-inmates are identified in explicit binding regulations or conditions which can be altered by law, but they nevertheless have a pervasive influence throughout the system of employment. While some attitudes can be changed by the kinds of programs we have recommended, no significant progress can be made in the area of employment opportunities for persons who have been prepared for employment by correction agencies until there is specific legislation prohibiting discrimination based on arrest and conviction records or other factors not directly related to the opportunity sought. There is no effective remedy under existing law for dealing with such discriminatory private employment practices as do exist.[160]

Private employers have a reasonable need to know of criminal

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[159] Employment of Persons with Arrest Records and the Ex-Offender, p. 32-3.

[160] The usefulness of Fair Employment Practices legislation, the Civil Rights Act of 1964, and 42 U.S.C., sec. 1981, is discussed in Appendix A.

convictions of persons applying for employment, but they have an obligation as corporate citizens to act fairly on such information and not to utilize it as a convenient exclusionary device. In our discussion of public licensing and employment, we proposed legislation preventing arbitrary and unreasonable discrimination based on criminal convictions not directly related to the opportunity sought (see above, pp. 122-25). It is entirely appropriate and necessary that such legislation be extended to cover actions by private employers as well. At issue is the right of the individual to expect fair and just treatment at the hands of his fellow citizens and to expect the equal protection of the law against unfair and unjust treatment. At issue also is the ability of the public and of its agencies to carry out programs of rehabilitation for persons convicted of crime in order to reduce escalating crime rates.

<u>Recommendation 52:</u> that legislation proposed in Recommendation 45 be extended explicitly to prohibit arbitrary and unreasonable discrimination by private employers which is based on criminal convictions not directly related to the opportunity sought.

<u>Recommendation 53:</u> that legislation proposed in Recommendation 45 be extended explicitly to prohibit arbitrary and unreasonable discrimination by employment referral agencies and by insurance or bonding underwriters which is based on criminal convictions not directly related to the benefit sought.

## D. LABOR UNIONS

Labor unions are another factor in the increasingly wide range of "gate-keepers" to employment opportunity. As with state licensing agencies, civil service boards, and private employers, unions can provide a major barrier for ex-inmates seeking employment.

Despite the perception of inmates and correctional officials with whom we talked that unions actively discriminate against ex-inmates, it is impossible to substantiate such a claim. As with some other controllers of employment opportunity, unions rarely have explicit blanket restrictions against persons with criminal records; exclusion of such persons is justified on more nebulous grounds of "good conduct" or "citizenship." Further, the correctional agencies have kept no records of inmate applications rejected by labor unions, and there is therefore only hearsay evidence of discrimination.

Whatever the actual facts of membership practices, the general expectation of discrimination militates against union membership for ex-inmates; applications are often regarded as futile and are simply not filed. In some cases, the perception of union restrictions has led to modifications of the training goals of correctional institutions, as officials attempt to prepare inmates for work in which there is little or no union interest or influence. In some cases, these occupations require high skills and are reasonably remunerative,

such as in independent radio-television repair shops; more often they are in less sophisticated fields such as general maintenance work. For the most part, factors which are both the cause and result of the lack of union interest--low skill requirements, low remuneration and prestige, low promotional opportunities, low mobility--also render these occupations ineffective in the rehabilitation of ex-inmates. Because these non-union jobs are usually with small and independent employers, they also rarely lead to any sizable placement opportunity for ex-inmates.

The problem with union membership for persons with criminal records is not dissimilar to problems discussed in this report with reference to private employment practices. Grounds for judicial review of adverse decisions, and especially of a consistent pattern of adverse decisions, can be provided through legislation which prevents arbitrary and unreasonable discrimination. Beyond the legal aspects of the problem, there is the pervasive impact of negative personal attitudes toward ex-inmates, and these attitudes must also be corrected.

Union officials have taken some steps to help correct these negative attitudes. The Community Services Department of the AFL-CIO recently published a brochure, "The Man Who Lived Again: Understanding and Helping the Released Prisoner," for distribution to

local unions.[161] Some unions have initiated direct-action programs to assist in the rehabilitation of offenders. The ILGWU established a training program at the Danbury (Conn.) Federal Penitentiary for sewing machine repairmen and provides union cards to graduates of the program to help them find employment upon release.[162] In Maryland, the AFL-CIO signed a contract with the Department of Correctional Services to help place released inmates in jobs.[163]

It is clear that unions must be perceived as a supportive resource rather than an adversary by the correctional agencies, and their assistance and cooperation must be cultivated. The influence of unions, especially in New York, is too pervasive to be avoided through attempts to place released inmates in non-union jobs. As we have indicated, while some union personnel may continue to be negative toward individual inmate applications, there is evidence of receptiveness to comprehensive union involvement in helping to solve problems of ex-inmates. One means of utilizing unions in problem solving for correctional agencies is the Human Resources Development Institute (HRDI) of the AFL-CIO. Its newsletter, What's

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[161] AFL-CIO Publication No. 63 (Washington: AFL-CIO, n.d.).

[162] Task Force Report: Corrections, p. 33.

[163] Emil Michael Aun, "Staying Free is a Job," Manpower, 3 (1971), 9.

Happening, has reported activity among local HRDI branches in working with inmates--"in released-time programs, in finding jobs for those who have served their term, and in counseling."[164] Another potential supportive program of HRDI is the "buddy system," which organizes experienced workers to assist in the social and work adjustment of newly-hired disadvantaged workers.[165]

We have recommended that representatives of labor be involved with representatives of management in trade advisory committees related to specific training programs in correctional facilities (see Recommendation 28). It is equally desirable that representatives of labor organizations be included in advisory committees related to the placement of inmates in employment, and it is essential that correctional agencies develop a closer working relationship with such labor union agencies as the Human Resources Development Institute.

Recommendation 54: that legislation proposed in Recommendation 45 prohibiting arbitrary and unreasonable discrimination based on criminal convictions not directly related to the opportunity or benefit sought be extended explicitly to be applicable to membership or other requirements of labor unions or other organizations which may be prerequisites to employment.

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[164] "Editorial," vol. 1, no. 12 (September-October 1971), p. 7.

[165] "1500 Buddies Extend Helping Hand to New Workers," What's Happening, vol. 1, no. 7 (April 1971), p. 1.

Recommendation 55: that representatives of labor unions be requested to serve on advisory committees related to the job placement of rehabilitated inmates, as proposed in Recommendation 51.

Recommendation 56: that officials of the correctional agencies in New York and Maine initiate discussions with the Human Resources Development Institute of the AFL-CIO and with other social-concern departments of labor unions with regard to potential supportive and cooperative programs and services.

# V. PAROLE AND AFTERCARE

## A. STAFF RESOURCES

The parole system is based on the assumption that there is a point at which further confinement of an inmate is of less reformative value to him and, therefore, of less value to society than a period of transition to community life under the supervision of correctional agencies.[166] Parole can be a critical factor in the rehabilitation of most inmates; it can serve as an incentive to encourage acceptable performance in rehabilitative programs during incarceration, and it can provide a supervised framework for adjustment to society after release from the correctional institution. Two major flaws, however, prevent the parole system from performing these positive functions:

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[166] A description of the parole system in New York is available in "Facts and Figures About the Activities of the Board of Parole and the Division of Parole of the Executive Department for the Year, 1 January 1970 to 31 December 1970." The Division of Parole is now a part of the Department of Correctional Services. A description of the parole system in Maine is available in the "Thirteenth Annual Report, State Probations and Parole Board, 1 July 1969 to 30 June 1970." Generally, see Nat R. Arluke, "A Summary of Parole Rules," in Carter, Probation and Parole (New York: John Wiley and Sons, 1970).

The first and most significant is a shortage of manpower of such magnitude as nearly to incapacitate the system altogether; the second is a reliance on paperwork and operational technicalities rather than direct personal support, an approach which is the natural consequence of the manpower shortage.

The basic working assumptions of the parole system are 1) that an analysis can be made of each inmate's progress toward rehabilitation in order to determine his readiness for parole and 2) that supervision and support can be provided for him during the period of his parole to facilitate his adjustment to society. In practice, there is only the most superficial analysis of progress toward rehabilitation. We have already discussed the inability of Service Unit [illegible] in the correctional institutions [illegible] with the overwhelming caseloads assigned to them (see pp. 26-28 and [illegible]-32). In one New York institution which we visited, it is a normal occurrence for an inmate to meet the Parole Board having had only one interview with the Service Unit, and it is normal for the Board to hear as many as two hundred cases in a four-day session at the institution. The result is an almost uniform application of a "parole formula" based on mechanical calculations of time served and "good time" awarded. The parolee is likely to find after release that the time of his supervising officer is also severely restricted. The Advisory Commission on Intergovernmental Relations has estimated

that parole and probation officers have available an average of only 15 minutes per month for supervising each probationer or parolee.[167]

A recommendation of increased staffing of parole services is both obvious and essential. In addition, however, there is a need for innovative programs to make more efficient use of professional staff time. Joseph Rowan has recognized the limited amount of time available for direct individual counseling, even with reasonable caseloads, and has recommended greater emphasis on such techniques as group counseling.[168] Parole program recommendations are beyond the scope of this study of barriers to training and employment, but the lack of adequate staff support for parole services is a sufficiently great barrier to rehabilitation and employment stability as to warrant our attention. We are therefore recommending the utilization of a range of personnel resources similar to those potentially supportive of rehabilitation programs within correctional institutions.

It seems clear to us that the state is not likely to provide the professional staff required for the intensity of support needed by parolees and that emphasis must be placed on the utilization of para-professionals and volunteers, on civic and religious group sponsorship of parolees,

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[167] State-Local Relations, p. 242.

[168] "Progressive Corrections," p. 75.

and on other ex-inmates in support of each other. The advantages are not only increased manpower for the system, but also a broadened base of understanding of the problems of parolees and increased public awareness of their goals and needs.[169]

Recommendation 57: that high priority be given 1) to increasing the staff personnel available for parole services, 2) to developing programs to utilize para-professional and volunteer assistance, including ex-inmates, and 3) to utilizing parolees in mutually supportive roles through group counseling and shared work assignments.

B. PAROLE VIOLATION

The regulatory barriers to successful parole are not significant. Legislation in both New York and Maine is sufficiently broad to allow wide discretion to parole officials, both in granting and denying parole and in setting the conditions of parole. While discretionary authority is desirable in a system which must be adapted to individual cases, however, absolute discretion offers no guarantee of fair or reasonable treatment, especially given the overwhelming burdens and pressures on the current parole staff. Decisions made hastily and in secret can unreasonably deny an inmate access to available employment and other rehabilitative programs and can unnecessarily interrupt employment

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[169] See for example, the President's Commission on Law Enforcement and the Administration of Justice, Challenge, p. 168, and the President's Task Force on Prisoner Rehabilitation, The Criminal Offender, p. 21.

already held by a parolee. Hearings which can result in the denial or revocation of parole are a significant factor in the rehabilitation system. While we do not recommend time-consuming adversary proceedings for such hearings, the interests of inmates, parolees, the correction system, and the public will be served by adopting standards of due process and by providing for appeal and judicial review.[170]

The revocation of parole is of particular concern to this study; its almost casual occurrence damages not only the rehabilitation of offenders but also weakens the confidence of employers in the employment stability of parolees. Uniform parole conditions in both New York and Maine have been significantly simplified and improved, but it is still possible to return a parolee to prison for such relatively minor offenses as driving a car without permission, getting married without permission, using alcoholic beverages to an unspecified degree not viewed as "in moderation" by the parole officer, or for failure to act in an "orderly and appropriate manner consistent with good behavior and citizenship." The Probation and Parole Board in Maine reported that approximately 70 percent of its parole violators were involved in "technical violations" of the conditions of parole;

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[170] See similar discussions and recommendations in Cohen, The Legal Challenge, p. 27, and Feingold, "Memo on Legislation," p. 3.

since 82 percent were employed at the time of the parole revocation, there was a substantial interruption of employment for technical violations.[171]

The situation is made worse by the practice of returning the parolee to the institution to await a hearing on his alleged violations, thus interrupting employment even for those parolees who may be found innocent by the Board. Further, as the decision to recommit may be based on a "reasonable cause" to believe the violation, no proof is required. Clearly, an employer considering the record of parole violations cannot be encouraged about prospects for long-term employability of any parolee.

There is no viable legal remedy to any injustices in the parole system. The courts have avoided considering the constitutional questions involved in parole proceedings by resorting to theories of grace, contract-consent, and custody.[172] Parole officials ought to seek remedies on their own initiative with or without court involvement, in order to strengthen the system and to strengthen confidence in it. Every effort ought to be made to prevent unjust decisions and to prevent unnecessary interruption of employment.

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[171] "Thirteenth Annual Report, 1970," pp. 8-10.

[172] Robert M. Carter and Leslie T. Wilkins, Probation and Parole: Selected Readings (New York: John Wiley and Sons, 1970), p. 445.

There is no demonstrable advantage in returning a parolee to prison except where further incarceration may be required for public safety. Short-term commitments for technical violations place increased responsibilities on the already over-burdened institutional staff and do not allow for any further meaningful involvement by the returned inmate in rehabilitative programs. Institutional officials who spoke with us about the problem asserted that parole violators do little but sit and await the expiration of their recommitment term. Some resort to recommitment may well be necessary in order to encourage compliance with parole conditions, but it is possible without jeopardizing employment to provide for a significant loss of parole freedom through recommitment on an intermittent basis, requiring that time be served on weekends or, if possible and necessary, evenings.

Recommendation 58: that hearings which may result in the denial or revocation of parole be conducted in accordance with standards of due process and that reasons for denial or revocation be specified in writing.

Recommendation 59: that 1) hearings for revocation of parole be conducted in locations and at times which will not interrupt the employment of the parolee unnecessarily and that 2) employed parolees be allowed to continue working until found guilty of violation unless public security requires immediate recommitment to an institution.

Recommendation 60: that recommitment for technical violation of parole conditions be served on an intermittent basis for employed parolees in order not to interrupt employment unless the public security or repeated violations make full-time recommitment necessary.

## C. COUNSELING AND JOB PLACEMENT

At various points in the report, we have commented on rehabilitation factors which are beyond the scope of a study of barriers to the employment of ex-inmates, but which have sufficiently significant impact on employment to require discussion. Perhaps the most important and yet the most subjective of these factors is the matter of the inmate's attitude, both toward society and toward himself. Clyde E. Sullivan has argued that the process of trial, conviction, and incarceration imposes a public identity--i.e., "criminal"--on personal identity and that the two become fused in the inmate's mind; the inmate may then develop a "self-protective posture which rejects those who reject him and reinforces an identification with a criminal culture . . . Such identifications and the social expectancies generated by them act as barriers to subsequent successful adjustment in the community."[173] Certainly, these aspects of the inmate syndrome can be a major barrier to employment and to stability in employment.

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[173] Sullivan, "Changes in Corrections: Show or Substance," Manpower, 3, no. 1 (January 1971), 5.

Effective supervision and counseling to correct negative attitudes cannot be given simply in the period immediately before and after release. Sullivan has said that "transitional programs" should in fact begin early in the correctional cycle, perhaps serving those who are entering the correctional institutions as well as those who are about to leave.[174] Throughout this report, we have made recommendations toward that end, from reference to the need to change dramatically the initial reception of the inmate into the institution (thereby creating for him a different image of himself, of the institution, and of his purpose there) to the need to change his daily routine and the nature of his general environment (thereby facilitating his adjustment to normal, non-criminal life). The period of re-entry into society becomes the crucible in which the actual rehabilitation of the offender is tested, and careful attention must be given to his needs in this critical time.

One of the factors of institutional life which tends to reinforce the negative self-identity of inmates is the constant return of other inmates who failed in their adjustment to society. As one correctional counselor said to us, "the inmate loses contact with the winners; he sees only the losers who come back, and he generalizes from these

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[174] *Ibid.*, p. 6.

negative examples to form an opinion of himself." We have recommended earlier that successfully rehabilitated ex-inmates be involved in the institutional program, not only because they are likely to have special sensitivity and ability to contribute to the program, but also because they can serve as models for those inmates still in the institution. This same principle applies to parole and other aspects of aftercare. The Abt report on MDTA training programs in correctional institutions specifically recommended the employment of former inmates as post-release counselors, and Joseph Rowan has noted successful utilization of ex-inmates as counselors in several states.[175] Former inmates in prisoners' aid associations have been involved with state employment service personnel in Maryland in the Baltimore Concentrated Employment Program which actually begins with pre-release counseling in the institutions,[176] and comparable associations in New York have indicated their willingness to provide similar services.[177]

While not designed exclusively for ex-inmates, the Baltimore program has proved that a significant impact on the employment

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[175] Abt Associates, <u>Final Summary</u>, p. 20; Rowan, "Progressive Corrections," p. 75.

[176] Emil Aun, "Staying Free is a Job," <u>Manpower</u> 3, no. 1 (January 1971), 9.

[177] Albert Morris, "The Involvement of Offenders," p. 13.

of ex-inmates can be made by an intensive job placement and counseling program.[178] A similar program in the Watts area of Los Angeles has also reportedly had remarkable success, one officer noting that a major barrier to rehabilitation is that inmates simply do not know how to find a job.[179] Available evidence suggests, however, that little job placement assistance is given to inmates in most correctional systems.

George Pownall concluded from his study of released inmates that fewer than ten percent obtained employment through state referral services and that no more than five percent found jobs through correctional agencies and personnel.[180] In our visits to institutions, we found that inmates, left to their own devices--i.e., the yellow pages of the telephone directory, the friends of their families, and contacts from among their acquaintances prior to incarceration--are likely to have little success in finding meaningful employment and almost no success in finding employment related to their institutional training programs. Various studies have also shown that only a small

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[178] Aun, p. 9.

[179] "Placing Parolees," Manpower, 3, no. 9 (September 1971), 25.

[180] "Employment Problems of Released Prisoners," p. 74.

proportion of released inmates are able to use their prison training for related jobs.[181]

Part of the problem of finding meaningful employment is caused by the requirement that an inmate have an acceptable job before he can be paroled, despite the obvious difficulty of locating and obtaining work from inside the prison. For the inmate, the job is a matter of expediency for release, not a matter of long-term effectiveness in his rehabilitation and adjustment to society. The incentive is simply to get any job in order to be released from the institution; once on the outside, the inmate can then look for more desirable and appropriate work. The possibility of moving to a better job while on parole, however, is hindered by the system's lack of provision for job exploration and its intolerance of any period of unemployment.

The problem has been somewhat alleviated by the provision for release on "reasonable assurance" that employment can be found; the inmate can then look for an acceptable initial job after he is out of the confines of the prison. Release on reasonable assurance, however, is utilized only as a last resort for the inmate who has been eligible for parole but has not been able to find employment; he will

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[181] See, for example, A Time to Act, p. 57; State-Local Relations, p. 59; Collins, "Training Needs in Correctional Institutions," p. 8.

get out of the institution much sooner by obtaining an inappropriate job than by waiting for the opportunity to look for an appropriate one. Further, there is every indication, as noted throughout this report, that few inmates will be able to find acceptable jobs related to their prison training without intensive professional assistance.

The New York State Department of Correctional Services has taken several steps to improve its placement services for inmates, principally by increasing the staff of the parole offices and by upgrading the professional qualifications of parole officers. Inmates are still required to exhaust their own possibilities for locating employment--family, friends, the yellow pages, etc.--before becoming eligible for assistance. Again, inmates will inevitably take any job they can find, however unsuitable, rather than wait to become eligible for assistance. Professional placement assistance is, in fact, the last resort. If employment is to be an integral part of the inmate's rehabilitation, it should become the first resort, and the Department of Correctional Services should be provided sufficient support to enable it to take more initiative in job placement for inmates.

In Maine, the Bureau of Corrections has developed an aggressive, "first-resort" kind of placement program with the help of a private firm with a record of success in assisting inmates in other states. Project EXIT (Ex-Offenders In Transition) is administered by Palmer/Paulson Associates, Inc., of Chicago, and is designed to

facilitate rehabilitation of the inmate and readjustment to society through pre-release counseling, job development, placement, and post-release counseling. The results of Palmer/Paulson's effort in Maine cannot yet be evaluated, but this firm has had notable success in a similar project in North Carolina and the prospect of success in Maine is encouraging.

A significant factor in private involvement in corrections is that the private firm has a direct financial stake in the success of the program and is therefore strongly motivated to effect the successful employment and rehabilitation of inmates. The potential negative factor of isolating the professional correctional staff from the placement function has already been mentioned. We have also recommended that the staff be involved as much as possible in placement in order to strengthen their own work in other aspects of rehabilitation and to provide a long-term benefit to the correctional system by improving both the perspectives and the qualifications of career personnel.

Recommendation 61: that successfully rehabilitated former inmates be employed in the counseling and supervision of inmates in rehabilitation programs, from the initial assignment of the inmate to the institution through his placement in acceptable employment after release.

Recommendation 62: that high priority be given 1) to increasing the staff available for assistance to inmates in job placement and counseling, 2) to improving the professional qualifications of such staff, and 3) to utilizing private professional firms with expertise in job placement, both for guaranteed performance in assisting inmates and for providing training assistance to members of the correctional staff.

## D. OTHER SUPPORT SERVICES

Current assistance programs for other citizens in hardship circumstances also require review for their applicability to persons released from correctional institutions. Unemployment insurance, for example, is often not available to released inmates because certain levels of income are required in the period preceding unemployment.[182] Under current arrangements, persons incarcerated in New York, Maine, and other states are necessarily precluded from earning the required income. This disability could be overcome by obtaining a revision of this requirement, by paying standard wages to inmates, or simply by crediting standard wages to inmate accounts before deducting costs for room, board, and training.

Some forms of welfare support for an inmate's family are also terminated immediately upon his release from prison, without regard to whether he has been able to find employment that will compensate for the loss of funds from welfare sources.[183] Certainly, some transitional procedure for gradual loss of support tied to increases in earnings should be adopted for the releasee to minimize

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[182] See Glaser, Zemans, and Dean, Money Against Crime, p. 39.

[183] Ibid., pp. 22-23.

the risk of forcing him back into prison in order to provide his family with a continuing level of support equal to that set by the welfare payments. There is a special rationale for modifications of the welfare regulations for those released inmates who are under parole supervision and remain technically under the custody of the correctional institution.

In addition to these sources of support, the correctional agencies should be supplied with adequate funds for assistance directly related to inmate rehabilitation after release, assistance in the form of loans or grants for such items as application fees, job-related tools and equipment, continued training, or relocation nearer to approved employment. The cost of such services would be far outweighed by the benefit to society of gainfully and meaningfully employed ex-inmates, of reduced likelihood of repeated criminal behavior, and in the avoidance of further acts of crime.

<u>Recommendation 63:</u> that correctional agencies seek to qualify deserving inmates for unemployment insurance upon release from the institution by 1) crediting inmates with standard wages for work done in the institution or 2) by obtaining a waiver of the requirement of previous income for those inmates whose application for unemployment insurance is approved by the correctional agency.

<u>Recommendation 64:</u> that regulations and procedures regarding welfare payments to families of inmates be modified to provide a graduated scale of support for the released inmate, based on his ability to secure employment and [illegible] level of income.

Recommendation 65: that adequate funds be provided to correctional agencies for assistance to rehabilitated releasees in the form of loans or grants for such items as application fees, job-related tools and equipment, continued training, or relocation expenses.

The Joint Commission on Correctional Manpower and Training recognized that "a good deal of the present lack of public interest and legislative support for corrections may well be ascribed to the failure to show how public funds have been invested and what the returns have been in men, women, and youngsters returned to the free community to lead useful lives."[184] Contrary to the general impression of dismal failure in our correctional systems, there have been remarkable successes in the rehabilitation of offenders in both New York and Maine. A public campaign to improve the image of the system and of the rehabilitated offender could do a great deal to remove the stigma of a criminal record which now acts as a barrier to employment and as a barrier to successful operation of the entire correctional system.

Recommendation 66: that public-service advertising be sought to dramatize for the general public in New York and Maine the successes of the state correctional systems and to create public understanding of and appreciation for the goals and needs of both the systems and the inmates.

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[184] Diamond, Crime and the Law, p. 14.

# VI. CONCLUSION

Employment and training are not isolated parts of the correctional process. They are integrally related to the entire system, and their effectiveness is dependent on improvements throughout the system. Nevertheless, there are ways in which employment and training can be strengthened as devices for the rehabilitation of offenders and in which barriers to employment and training can be removed or reduced. A review of theory and experience in corrections indicates that the removal of those barriers is an essential element in the effort to rehabilitate inmates and to release them from the invisible prison in which they are now held long after their release from institutional custody.

Some of the recommendations made in this report are related to simple procedural matters and may be implemented without delay or cost. Others require additional funds or additional time for development and implementation; they are often accompanied by recommendations for interim modifications. Taken as a whole, the recommendations call for the expenditure of significant amounts of time and money to remove barriers to training and employment for inmates--

but the costs of continuing the present system are also high, in financial and human terms, and the benefits are few. The cost of fundamental improvements in the system will be more than offset by the benefits to society, in dollars saved in the reduction of further acts of crime and further incarceration, and especially in human lives enriched and strengthened and restored to the community.

# APPENDICES

APPENDIX A

# LEGAL MEANS FOR OVERCOMING BARRIERS TO THE EMPLOYMENT OF EX-OFFENDERS

James A. Stolpestad*

## I.

## Introduction

The difficulties which ex-offenders encounter in attempting to find employment have been documented and discussed for the past two decades. See, e.g., Hess & LePoole, Abuse of the Record of Arrest Not Leading to Conviction, 13 Crime & Delinquency 494 (1967); President's Comm'n on Law Enforcement & Administration of Justice, Report: The Challenge of Crime in a Free Society 75 (1967); Rubin, The Law of Criminal Correction (1963); Schwartz & Skolnick, Two Studies of Legal Stigma, 10 Social Problems 133 (1962); L. Zeitz & G. Borkow, Barrier to the Employment of Former Offenders: Local Governmental Job Applications, Jan. 4, 1971 (unpublished manuscript in Georgetown University Law Center, Institute of Criminal Law and Procedure); Melichercik, Employment Problems of Former Offenders, 1 Nat'l Probation and Parole Ass'n J., Jan. 1956; and Wyle, The Employment of Released Offenders, 25 Probation, Oct. 1946.

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*Mr. Stolpestad prepared this analysis as a consultant to the study at the request of the project staff. He has had practical experience with problems of ex-inmates in his former positions as Advisor to the Equal Opportunity Office for the Southeastern Region of the U.S. Department of Housing and Urban Development, as Director of the Enforcement Division of the Minnesota Department of Human Rights, and as Special Assistant Attorney General for the State of Minnesota.

It is only relatively recently that serious efforts have been started in many parts of the United States to develop legal principles for dealing with this problem which in 1969 alone affected nearly 6 million persons arrested. Federal Bureau of Investigation, U.S. Dep't of Justice, Crime in the United States: Uniform Crime Reports - 1969, at 108 (1969). The problem is particularly acute for minority group persons, especially blacks, who in 1969, for example, constituted 28 percent of those arrested, while comprising only 11 percent of the total population. U.S. Bureau of the Census, Statistical Abstract of the United States: 1969, at 23 (1969). This paper will outline these principles and discuss the ways in which they may be utilized to break down the barriers in public policies and private attitudes to the employment of ex-offenders.

## II.

## Public Policies

### A. Some Dimensions of the Problem.

The States have erected an almost impassable barrier to the employment of ex-offenders through their professional licensing and public employment regulations. The impact of these regulations has been dealt with elsewhere. See, e.g., Note, Employment of Former Criminals, 55 Cornell L. Rev. 306 (1970); Note, Restoration of Deprived Rights, 10 Wm. & Mary L. Rev. 924 (1969).

In one typical state, California, some 60 occupations require a state license. For 39 of these professions, the licensing laws specify that the license may be denied, revoked, or suspended for a felony conviction. Rubin, supra at 625. In Maryland, for example,

a man was denied a taxi license because he had been arrested in connection with the distribution of socialist literature. The denial was upheld by that state's highest court. Kaufman v. Taxicab Bureau, 236 Md. 476, 204 A.2d 521 (1964), cert. denied, 382 U.S. 849 (1965).

The statutes in many other states, while stopping short of specifying an arrest or conviction record as a ground for a license denial, often invest administrative personnel with broad powers to determine such vagaries as "fitness" and "character." Administrative determinations of this kind cannot be overturned without showing that they were arbitrary or capricious. See, e.g., McDonough v. Goodcell, 13 Cal.2d 741, 91 P.2d 1035 (1939).

Public employment is even more strictly regulated than licensed occupations. Half the states close public employment to persons with conviction records. Rubin, supra at 613-14; see, e.g., Ill. Ann. Stat. ch. 24, sec. 3-6-5 (1969). A recent study revealed that 50 percent of the states and 75 percent of the local governments surveyed questioned applicants about criminal records. Comment, Discriminatory Hiring Practices Due to Arrest Records - Private Remedies, 17 Vill. L. Rev. 110, 112 (1971). The United States Civil Service Commission application requires persons to furnish information about past convictions and pending charges. U.S. Civil Service Comm'n, Personal Qualification Statement - Form 171, Question 29 (1968). Even the military refuses or strictly limits the enlistment of persons with conviction records. 10 U.S.C. sec. 3253(a) (1964).

Indicative of this point of view were the remarks of the late Justice Felix Frankfurter in DeVeau v. Braisted, 363 U.S. 144 (1960) (Black, Douglas, and Warren, JJ., dissenting). In upholding

the constitutionality of a provision in the New York Waterfront Commission Act which barred ex-offenders, he wrote that "barring convicted felons from certain employment is a familiar legislative device to insure against corruption in specified, vital areas." 363 U.S. at 158-9.

B. Remedies.

The obvious remedy for dealing with legislative prohibitions on the employment of ex-offenders is the amendment or repeal of such laws. Legislative action to expunge or seal arrest and conviction records is a further measure which apparently has not been successful where attempted. Note, Employment of Former Criminals, 55 Cornell L. Rev. 306 (1970); see, e.g., Cal. Penal Code secs. 1203.4 - 4a, 1203.45 (West Supp. 1968). Political realities, however, often militate against legislation.

Another remedy is to challenge in the courts the validity or constitutionality of laws or regulations which discriminate against those with arrest or conviction records. Jurisdiction for challenging such state action may be based upon the Due Process Clause of the Fourteenth Amendment; the Equal Protection Clause of the Fourteenth Amendment, or the Civil Rights Act of 1871, which is codified as 42 U.S.C. sec. 1983.

1. The Due Process Clause.

Whether securing public employment or an occupational license is a constitutionally protected right or merely a privilege is a subject that has received wide debate. See Affeld & Seney, Group Sanctions and Personal Rights - Professions, Occupations, and Labor

Law, 11 St. Louis U. L. J. 382 (1968); Reich, The New Property, 73 Yale L. J. 733 (1964); Jaffee, Law Making by Private Groups, 51 Harv. L. Rev. 201 (1937). The courts have been reluctant to find violations of constitutional protections in cases where employment has been foreclosed to ex-offenders. See, e.g., Barsky v. Bd. of Regents, 347 U.S. 442 (1954) (revocation of physician's license upheld for refusal to give information to House Un-American Activities Committee); accord, DeVean v. Braisted, supra.

More recently, however, the courts have begun to apply to these cases that provision of the Fourteenth Amendment which declares that no state shall "deprive any person of life, liberty, or property without due process of law." See generally Van Alstyne, The Demise of the Right - Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439 (1968). The concept of due process of law is defined in both substantive and procedural terms. In this area of the law, the courts have been concerned with substantive due process, which is a constitutional guaranty that no person shall be deprived of his life, liberty, or property arbitrarily, capriciously, or unreasonably. Pickering v. Board of Education, 391 U.S. 563 (1968); Greene v. McElroy, 360 U.S. 474 (1959). This means that the laws, regulations and official actions must themselves be reasonable. Slochower v. Board of Higher Education, 350 U.S. 551 (1956).

The United States Supreme Court has applied the doctrine of substantive due process to public employment and licensing. In Schware v. Bd. of Bar Examiners, 353 U.S. 232, (1957), the Court recognized that "a State cannot exclude a person from ... any ... occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." 353 U.S. at 238-9. See also Slochower v. Board of Higher Education,

supra, and Weiman v. Updegraff, 344 U.S. 183 (1952). Although the court in Schware was dealing with the arrest record of a Bar Examination applicant, the principle that "qualification[s] must have a rational connection with the applicant's fitness or capacity", 353 U.S. at 239, has been applied by various lower courts to other employment standards. In McConnell v. Anderson, 316 F. Supp. 809 (D. Minn. 1970), rev'd on other grounds, ___ F.2d ___ (8th Cir. 1971), for example, the court found no reasonable relationship between the homosexuality and fitness of an applicant for a job as librarian at a state university and ordered the university to hire the individual to the position for which he had applied.

The clearest application of substantive due process to the use of arrest and conviction records by public agencies as employment criteria is Carter v. Gallagher, ___ F. Supp. ___ [3 EPD par. 8205], aff'd 452 F.2d 315 (8th Cir. 1971). The District Court in Carter was confronted with a number of allegedly discriminatory civil service regulations, one of which barred any person with an arrest or conviction record. The court found that:

> [N]o compelling employment purpose was served by the absolute felony bar to employment as a fire fighter, especially since no distinction was made between types of crimes, no consideration was given to the length of time which elapsed between the conviction and the application, and no effort was made to determine what convictions reasonably can be said to constitute a bar to employment as a fire fighter. ___ F. Supp. at ___ [CCH Empl. Prac. Rep. 6671].

The court concluded as a matter of law that restricting employment in this manner violated the Due Process Clause because the regulations were not reasonably related to performance on the job of fire fighter. This court then enjoined the enforcement of the civil service regulations. The Court of Appeals for the Eighth Circuit

affirmed the District Court decision and in so doing made the statement that a felony conviction cannot be used as an absolute bar to employment without showing a substantial adverse relationship to the job to be performed. 452 F.2d at 327.

Carter will no doubt be followed by courts in other jurisdictions for it is an unequivocal statement that arbitrary discrimination by public agencies on the basis of arrest and conviction records violates the Due Process Clause of the Fourteenth Amendment.

2. The Equal Protection Clause.

The provision of the Fourteen Amendment which forbids the states from denying any person the equal protection of the laws affords another basis for challenging employment restrictions in this area.

This constitutional guaranty requires that all persons be treated alike under similar circumstances and conditions. Colgate v. Harvey, 296 U.S. 404 (1935). Laws, regulations, and official actions which classify people in an arbitrary or capricious manner violate the Equal Protection Clause. Morey v. Doud, 354 U.S. 457 (1956). A classification on the basis of race, for example, would be considered per se arbitrary and capricious. See, e.g., Schware v. Bd. of Bar Examiners, supra (dictum). But arrest and conviction records used as employment criteria have precisely the same effect; their use creates racial classifications. That is because statistically more non-whites in proportion to their numbers in the population than whites are arrested and convicted each year in the United States. U.S. Bureau of the Census, supra at 23. A law or regulation that would bar all persons with criminal records would therefore affect

disproportionately more non-whites than whites. See Note, Arrest Records as a Racially Discriminatory Employment Criteria, 6 Harv. Civ. Lib.-Civ. Rights L. Rev. 165 (1970). The use of this employment standard would thus impose a greater burden upon non-whites and would accordingly deny them the equal protection of the laws. The courts have uniformly concluded that this result violates the Fourteenth Amendment. See, e.g., Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); Bolling v. Sharpe, 347 U.S. 497 (1954); Shelly v. Kraemer, 334 U.S. 1 (1948); Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971); Norwalk CORE v. Norwalk Development Agency, 395 F.2d 920 (5th Cir. 1968). The decision in Carter v. Gallagher, supra, was also based upon the Equal Protection Clause.

An individual must be a member of the affected class before he can assert the Equal Protection Clause as a bar to a discriminatory employment practice. [illegible] 1967). Once an equal protection issue is [illegible], however, any litigant may invoke the court's inherent equity powers to obtain injunctive relief. United States v. Alabama, 371 U.S. 37 (1963); see 28 U.S.C. sec. 1651. Thus, a permanent injunction would prohibit an employer from using arrest or conviction records as employment criteria for all applicants regardless of race. See Carter v. Gallagher, supra.

3. 42 U.S.C. sec. 1983.

Section 1983 of Title 42 of the United States Code provides an independent basis for jurisdiction in actions against public employers. It reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of

> any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action at law, suit in equity, or other proper procedure for redress.

Section 1983 is derived from the Civil Rights Act of 1871. It is essentially an omnibus jurisdictional statute for reaching actions of state officials at any level and in any form which offend any constitutional or federal statutory guaranty. Monroe v. Pape, 365 U.S. 167 (1961). It is therefore considerably broader in its scope than either the Due Process or Equal Protection Clauses.

The rights, privileges, and immunities referred to in sec. 1983 include all Fourteenth Amendment rights, Monroe v. Pape, supra, First Amendment rights, Cooper v. Pate, 378 U.S. 546 (1963); rights under various federal statutes, Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970) (Public Accommodations Title of 1964 Civil Rights Act); and no doubt ~~other~~ rights and privileges which the courts have yet to enumerate.

A person with an arrest or conviction record aggrieved by a public employer's refusal to hire him because of such record would therefore have a cause of action under sec. 1983 for a denial of, for example, due process of law. This was the theory used successfully by the plaintiffs in Carter v. Gallagher, supra, where the court unequivocally invalidated restrictions on the employment of ex-offenders because they conflicted with the due process guaranty of the Consitution. Section 1983, through the court's injunctive power, would prohibit the use of such restrictions against all other applicants as well.

It is quite likely that future litigants in this area, like those in Carter, will use sec. 1983 to establish new constitutional precedents for broadening the rights of those who are presently barred from public employment or licensing because of their criminal records. Short of remedial legislation on a large scale, the prospects of which seem remote, sec. 1983 may have a greater impact upon this problem in the years ahead than any other single law.

III.

Private Attitudes

A. An Outline of the Problem.

The private employer is largely insulated from constitutional constraints on his hiring decisions. The Fourteenth Amendment and 42 U.S.C. sec. 1983 apply only to public employers. Yet the private employer is as given to making arbitrary decisions about job qualifications as is his public counterpart. Hearings on Equal Employment Opportunity Before the General Subcomm. on Labor of the House Comm. on Education and Labor, 88th Cong., 1st Sess. passim (1963); G. Allport, The Nature of Prejudice 10 (1954). The need for controls on the discretion of private employers has not gone unrecognized. See, e.g., Blumrosen, The Duty of Fair Recruitment Under the Civil Rights Act of 1964, 22 Rutgers L. Rev. 465 (1968); M. Sovern, Legal Restraints on Racial Discrimination in Employment (1966); G. Becker, The Economics of Discrimination (1957). The problem has been how to devise effective measures to cope with the diversity of employment practices that exist among the thousands of private employers with whom ex-offenders come in contact.

B. Remedies.

There is no obvious remedy for dealing with private employment practices. Instead, it is possible to challenge discrimination on the basis of arrest and conviction records from a number of starting points, none of which is entirely satisfactory: state fair employment practices acts; the 1964 Civil Rights Act; 42 U.S.C. sec. 1981; and an action for invasion of privacy.

1. State FEP Legislation.

Some 32 states have enacted legislation to prohibit discrimination in employment. Typically these laws forbid employers to base employment decisions upon the race, color, national origin, and sometimes the age or sex, of those who apply for jobs. These laws do not, however, specifically apply to discrimination because of criminal records. Nor have the courts, at least in the reported decisions, construed these laws to apply to this area. Accordingly, a number of commentators have advocated that state FEP laws be extended to bar exclusions from employment of individuals with arrest and conviction records. Note, _Employment of Former Criminals_, 55 Cornell L. Rev. 306 (1970); Note, _Discrimination on the Basis of Arrest Records_, 56 Cornell L. Rev. 470 (1971).

Only Illinois has amended its FEP law in an effort to deal with the problem. However, Ill. Rev. Stat. 1965, ch. 48, sec. 853 was amended to read:

> It is an unfair employment practice ... for any employer, employment agency or labor organization to inquire on a written application whether a job applicant has ever been arrested.

It is apparent that this language falls short of providing a meaningful remedy.

It is perhaps unrealistic to expect the states to provide leadership in this area of the law, given the political timidity of most state legislatures. Note, Employment Discrimination and Title VII of the Civil Rights Act of 1964, 84 Harv. L. Rev. 1109 (1971). The ex-offender must turn elsewhere for an effective remedy.

2. Civil Rights Act of 1964.

Title VII of the Civil Rights Act of 1964 forbids employers and unions to discriminate on the basis of race, color, sex, religion, or national origin. 42 U.S.C. secs. 2000e - 2000e-15. Its coverage is limited to employers of 15 or more persons who do business in interstate commerce.

Title VII provides that:

> It shall be an unlawful employment practice ... to fail or refuse or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin ....

Among the most difficult cases that have been litigated under Title VII have been those where allegedly neutral job qualifications have had the effect of eliminating blacks and other minority group individuals from employment consideration. Intelligence tests, educational standards, seniority requirements, and criminal records often have a substantially adverse effect on the groups protected by the Act. Until recently, the question has been the extent to which the courts would use Title VII to look through qualifications formally a product of business purpose to see whether their business justification outweighs their discriminatory effects.

Testing has been the principal area of controversy. Business has had a special interest in testing, because it cloaks employment decisions with objectivity and protects the employer from charges of nepotism or discrimination. See Cooper & Sobol, Seniority and Testing Under Fair Employment Laws: A General Approach to Objective Criteria of Hiring and Promotion, 82 Harv. L. Rev. 1598, 1637 (1969). The difficulty has been that, even though many commonly used tests have little value as predictors of performance in unskilled or semiskilled jobs, testing, with its devastating impact on minority group persons, continues to be relied upon by employers. Id.

Because of the decision of the United States Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), however, these employment standards must be viewed in a different light. Griggs held that the Wonderlic aptitude test violated Title VII because it was not job related and because it had an adverse effect on blacks. In words that would apply equally well to other employment criteria, including arrest and conviction records, Chief Justice Burger wrote for the unanimous court:

> The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited. 401 U.S. at 431.

A lower court case that was actually decided before Griggs has applied the same principle to arrest records. In Gregory v. Litton Systems, Inc., 316 F. Supp. 401 (N.D. Cal. 1970), the District Court found that blacks were arrested disportionately more often than

their numbers in society and that an arrest record was irrelevant to an applicant's suitability for employment. Cf. Carter v. Gallagher, supra (decided on other grounds).

Although there are no reported decisions that follow Gregory or that apply the principles of Carter v. Gallagher to the Title VII area, there can be no question that a private employer covered by the Act can no longer utilize arrest and conviction records as employment criteria without making a showing of business necessity to justify their use. And proving business necessity in race cases has become a very heavy burden. See Jones v. Lee Way Motor Freight, 431 F.2d 245 (10th Cir. 1970).

Title VII is thus a highly effective device for questioning the arbitrary use of criminal records by private employers as employment criteria. Although it can only be invoked by those who are covered by the Act against relatively large employers, it would provide relief for white males as well through the use of the court's injunction powers.

3. 42 U.S.C. Sec. 1981.

[illegible] of Title 42 of the United States Code offers a [illegible] comprehensive and [illegible] unlimited [illegible] for challenging discrimination in this area. It reads as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens... (Emphasis Supplied.)

This section is a codification of the Civil Rights Act of 1866, which also contained a provision guarantying to all citizens "the same right ... as is enjoyed by white citizens ... to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. sec. 1982. The United States Supreme Court in Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), interpreted sec. 1982 to apply to purely private acts of discrimination. In a closely related decision, Sullivan v. Little Hunting Park, 396 U.S. 229 (1969), the court suggested that sec. 1981 authorized an action for damages.

A number of lower courts, in the wake of Jones and Sullivan, have applied sec. 1981 to employment contracts between employers and employees and to refusals to contract. See Young v. International Telephone & Telegraph Co., 438 F.2d 757 (3d Cir. 1971); [illegible] v. North Broward Hospital Dist., 427 F.2d 468 (5th Cir. 1971); Waters v. Wisconsin Steel Works of International Harvester Co., 427 F.2d 476 (7th Cir.), cert. denied, 400 U.S. 911 (1970); Culpepper v. Reynolds Metals Co., 421 F.2d 888 (5th Cir. 1970). These decisions demonstrate the viability of sec. 1981 as a means for reaching private employment discrimination.

While there are presumably no limitations on sec. 1981's [illegible] individuals, [illegible] through the [illegible] of injunctive [illegible].

4. Action for Invasion of Privacy.

A tort action for invasion of privacy may provide a remedy in this area for an individual who cannot avail himself of one of the Civil Rights Acts.

This action would be based upon the common law principle that a person has a right to be free from public intrusions upon his private life. Comment, Discriminatory Hiring Practices Due to Arrest Records - Private Remedies, 17 Vill. L. Rev. 110, 112 (1971). With little apparent recognition from the commentators, a number of courts have already adopted this argument. In Kalish v. United States, 271 F. Supp. 968 (D. P. R. 1967), the District Court ordered a criminal record expunged on the theory that its continued maintenance violated the plaintiff's "right of privacy." 271 F. Supp. at 970. Similarly, in Mavity v. Tyndall, 224 Ind. 364, 66 N. E. 2d 755 (1946), appeal dismissed, 333 U. S. 834, cert. denied, 333 U. S. 858 (1948, the court held that the continued maintenance of arrest and conviction records "would constitute an actionable invasion of privacy." 224 Ind. at 38_, 66 N. E. 2d at 762. See also McGovern v. Van Riper, 137 N. J. Eq. 24, 43 A. 2d 514 (1945), aff'd, 137 N. J. Eq. 54_, 4_ A. 2d 642 (1946). To be useful in solving employment problems, this doctrine would have to be extended beyond the scope of these cases, where the tortfeaser has been the agency having custody of the records rather than the employer himself.

This could perhaps be accomplished by the application of the theory in Griswold v. Connecticut, 381 U. S. 479 (1965), where the United States Supreme Court speaking through Justice Douglas found a constitutional right of privacy implicit in the First, Third, Fourth, Fifth, and Ninth Amendments. 381 U. S. at 323. See Dixon The Griswold Penumbra: Constitutional Charter For An Expanded Law of Privacy?, 64 Mich. L. Rev. 197 (1965). Justice Goldberg's concurring opinion in Griswold argued that "the right of privacy is a fundamental personal right," 381 U. S. at 494, which is entitled to constitutional protection.

Certainly, it could be argued that it would be a breach of that right for an employer to have access to information about an applicant which in most cases would have no reasonable relation to job performance. Cf. Griggs v. Duke Power Co., supra. Through further refinement by future litigants, this doctrine could become an important remedy for dealing with the discriminatory use of criminal records by private employers.

IV.

Conclusion

The denial of employment to those with arrest and conviction records is a problem of considerable magnitude. Comprehensive legislation on the federal level would be the most effective remedial action that could be taken. At the present time, however, to seek redress an aggrieved person could commence an action against a public employer under the Due Process Clause, the Equal Protection Clause, or 42 U. S. C. sec. 1983, or against a private employer under a state FEP law, the Civil Rights Act of 1964, 42 U. S. C. sec. 1981, or the common law doctrine of invasion of the right to privacy. Section 1983 has proven to be an effective tool for dealing with the problem on the part of public employers, while the Civil Rights Act of 1964 and sec. 1981 hold out the most promise for reaching discriminatory employment decisions on the part of private employers.

## APPENDIX B

### SELECTED OCCUPATIONS FOR WHICH LICENSING, CERTIFICATION, OR REGISTRATION IS REQUIRED IN MAINE, NEW YORK STATE, AND NEW YORK CITY*

Agricultural Aircraft Operator: Federal Aviation Administration.

Agricultural Products Inspector: U.S. Dept. of Agriculture, Fruit and Vegetable Div.

Airman (Pilots, Mechanics, Dispatchers, Technicians, etc.): Federal Aviation Administration.

Alcohol or Alcoholic Beverages (employment by brewers, brokers, distillers, distributors, retailers, truckers, or warehouses): N.Y.S. Liquor Authority.

Ambulance Services: Me. Dept. of Health and Welfare, Bureau of Medical Care; N.Y.C. Health Dept.; N.Y.S. Dept. of Health (exclusive of N.Y.C.).

Amusement Device Operator: N.Y.C. Dept. of Buildings.

Animals, possession and sale of: N.Y.S. Conservation Dept.

Arborist: Me. Forestry Dept.

Auctioneer: Me. Secretary of State.

Automobile Mechanic: Me. State Police, Bureau of Motor Vehicle Inspection.

Barber: Me. Bd. of Barbers; N.Y. Secretary of State.

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*Occupations which are highly restricted by virtue of their arcane nature (such as pyrotechnists and tattoo artists) or by virtue of advanced educational requirements (such as psychiatrists, attorneys, and architects) have been omitted from the list.

Billiard Room and Employees: N.Y.C. Dept. of Consumer Affairs; N.Y. Secretary of State (exclusive of N.Y.C.).

Boiler Inspector: Me. Dept. of Labor and Industry, Boiler Div.; N.Y.C. Dept. of Buildings.

Boiler Installer: N.Y.S. Labor Dept., Div. of Industrial Safety Services.

Bootblack (outside): N.Y.C. Dept. of Consumer Affairs.

Box Office Employee (professional boxing, sparring, or wrestling exhibitions): N.Y.S. Athletic Commission.

Boxers: Me. Boxing Commission; N.Y.S. Athletic Commission.

Breeder (game birds or animals): N.Y.S. Dept. of Environmental Conservation.

Camping Trip Leader: Me. Dept. of Fisheries and Game.

Cashier: Me. Dept. of Banks and Banking; N.Y.S. Banking Dept.

Chauffeur: N.Y.S. Dept. of Motor Vehicles.

Clinical Laboratory Technician: N.Y.C. Dept. of Health. Me. requires registry with the American Society of Clinical Pathologists.

Deerskins and Heads Dealer: Me. Dept. of Inland Fisheries and Game.

Dental Hygienist: Me. Bd. of Dental Examiners; N.Y.S. Education Dept.

Dietician: Me. requires registry with American Dietetic Assoc.

Driver, bus (sightseeing): N.Y.C. Dept. of Consumer Affairs.

Driver, cab: N.Y.C. Police Dept.

Driver, express: N.Y.C. Dept. of Consumer Affairs.

Driver, horse-drawn cab: N.Y.C. Dept. of Consumer Affairs.

Electrician: Me. Electrician's Examining Board; N.Y.C. Dept. of Public Works.

Elevator Inspector or Mechanic: Me. Dept. of Labor and Industry, Bd. of Elevator Rules and Regulations; N.Y.C. Dept. of Buildings.

Exterminator: Me. Bd. of Pesticides Control.

Fisherman, commercial: Me. Dept. of Sea and Shore Fisheries.

Fur Dealer: Me. Dept. of Inland Fisheries and Game.

Gasoline Handler (in storage, filling station, etc.): N.Y.C. Fire Dept.

Guard, watch and patrol agencies: N.Y. Secretary of State.

Guide (camping, hunting, fishing): Me. Dept. of Inland Fisheries and Game.

Guide, sightseeing: N.Y.C. Dept. of Consumer Affairs.

Gunsmith: N.Y.C. Police Dept.

Hairdresser: Me. Bd. of Hairdressers; N.Y. Secretary of State.

Harness Racing Driver, Trainer or Groom: Me. Harness Racing Commission, N.Y. Secretary of State.

Hoisting Machine Operator: N.Y.C. Dept. of Buildings.

Home Repair Salesman: Me. Dept. of Banks and Banking.

Home Worker: N.Y. Dept. of Labor, Div. of Labor Standards.

Horse Race Trainers, Jockeys, Employees: Me. Running Horse Commission; N.Y.S. Racing Commission.

Insurance Adjuster, Agent, or Broker: Me. Insurance Dept.; N.Y.S. Insurance Dept.

Investigator, private: N.Y.S. Secretary of State.

Keymaker: N.Y.C. Dept. of Consumer Affairs.

Lightning Rod Agent: Me. Insurance Dept., Fire Prevention Div.

Locksmith: N.Y.C. Dept. of Consumer Affairs.

Longshoreman: N.Y. Waterfront Commission.

Midwife: N.Y.S. Dept. of Health (exclusive of N.Y.C.); N.Y.C. Dept. of Health.

Milk and Cream Tester and Sampler: Me. Dept. of Agriculture, Div. of Consumer Protection; N.Y.S. Dept. of Agriculture and Markets.

Motion Picture Machine Operator: Me. Insurance Dept.; N.Y.C. Dept. of Public Works.

Musician, itinerant: N.Y.C. Dept. of Consumer Affairs.

News Stand Employee: N.Y.C. Dept. of Consumer Affairs.

Nurse, practical: Me. State Bd. of Nursing; N.Y.S. Education Dept.

Nurseryman: Me. Dept. of Agriculture, Plant Industry Div.

Oil Burner Installer or Serviceman: Me. Oil Burnermen's Licensing Bd.; N.Y.C. Dept. of Public Works.

Peddler, itinerant: Me. Secretary of State; N.Y.C. Dept. of Consumer Affairs.

Photographer, itinerant: Me. Secretary of State.

[illegible]

Pier [illegible]: N.Y.C. Dept. of Water Resources.

Pilot and Engineer, vessels on inland waterway: N.Y.S. Dept. of Environmental Conservation.

Plumber: Me. Dept. of Health and Welfare, N.Y.C. Dept. of Public Works.

Port Watchman: N.Y.S. Waterfront Commission.

Poultry Dealer: Me. Dept. of Agriculture, Div. of Animal Industry; N.Y.C. Dept. of Consumer Affairs.

Prospector, mining: Me. Mining Commission.

Real Estate Broker or Salesman: Me. Real Estate Commission; N.Y. Secretary of State.

Seaman (and related shipboard occupations): U.S. Coast Guard Marine Inspection Office.

Show Attendant, common: N.Y.C. Dept. of Consumer Affairs.

Sea Moss Raker: Me. Dept. of Sea and Shore Fisheries.

Shorthand Reporters, certified: N.Y.S. Education Dept.

Sign Hangers: N.Y.C. Dept. of Public Works.

Social Worker, associate: Me. Bd. of Social Worker Registration; N.Y. Dept. of Education.

Stevedore: N.Y.S. Waterfront Commission.

Taxidermist: Me. Dept. of Inland Fisheries and Game; N.Y.S. Dept. of Environmental Conservation.

Vendor, itinerant: Me. Secretary of State; N.Y.C. Dept. of Consumer Affairs.

Weighmaster, public: N.Y.S. Dept. of Agriculture and Markets.

Weights and Measures, dealer or repairman: Me. Dept. of Agriculture, Div. of Consumer Protection.

Welder, structural: N.Y.C. Dept. of Buildings.

Welder, boiler: Me. Dept. of Labor and Industry.

Welder, bridge: Me. Highway Commission.

Worm Dealer or Digger, commercial: Me. Commissioner of Sea and Shore Fisheries.

X-ray Technician: N.Y.S. Dept. of Health. Me. requires certification by American Registry of Radiologic Technologists.

# APPENDIX C

## RESOURCE PERSONS FOR THE STUDY*

Alexander, Thomas. Deputy Superintendent, Coxsackie Correctional Facility, West Coxsackie, New York.

Bach, Charles B. Manpower Director, Poughkeepsie, N.Y.

Beaubriand, Jean C. Correction Counselor, Clinton Correctional Facility, Dannemora, New York.

Beecher, Raymond. Correction Counselor, Coxsackie Correctional Facility, West Coxsackie, New York.

Black, Leonard S. Director of Education, Coxsackie Correctional Facility, West Coxsackie, New York.

Busher, Walter. American Justice Institute, Sacramento, California.

Carey, Ange F. Director of Correctional Guidance, Department of Correctional Services, New York State, Albany, New York.

Conboy, Joseph P. Superintendent, Great Meadow Correctional Facility, Comstock, New York.

Conrad, John. Director of Research & Evaluation, National Institute of Criminal Justice, Washington, D.C.

Corey, Olga. Communications Director, AFL-CIO, Washington, D.C.

Cox, Thomas H. Assistant Professor, Law/Justice Studies, Glassboro State College, Glassboro, New Jersey.

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*In addition to shop supervisors, vocational training instructors, and correctional officers in the institutions visited.

Cunningham, John. Deputy Warden, N.Y.C. Correctional Institution for Men, East Elmhurst, N.Y.

Davis, Walter G. Director, Dept. of Education, AFL-CIO, Washington, D.C.

[illegible], Jack, Jr. Associate Administrator for Financial Assistance, Small Business Administration, Washington, D.C.

Elias, Albert. Superintendent, Yardville Youth Reception Center, Yardville, New Jersey.

Feingold, Pauline. Director. Coalition Action Council, New York Urban Coalition, New York, N.Y.

Greene, Karen. Office of Manpower Research, U.S. Dept. of Labor Washington, D.C.

Grenis, Bert. Corrections Counselor, Green Haven Correctional Facility, Stormville, New York.

[illegible], Dorothy C. Superintendent, Women's Correction Center and Stevens School, Skowhegan and Hallowell, Maine.

Hansen, Edward J. Assistant Director, Division of Probation and Parole, Department of Mental Health and Corrections, Augusta, Maine.

Henrikson, Lars V. Deputy Warden for Care and Treatment, Maine State Prison, Thomaston, Maine.

Hornum, Finn. Assistant Prof. of Sociology, Sociology Dept., La Salle College, Philadelphia, Pa.

Huggins, Miller. Supervisor of General Education, Clinton Correctional Facility, Dannemora, New York.

Johnson, Merton. Superintendent, Men's Correctional Center, S. Windham, Maine.

Kavanaugh, Lawrence. Assistant Director, Parole Field Operations, State Department of Correctional Services, Albany, New York.

Kimball, William. Assistant Director, Division of Probation and Parole, State Department of Mental Health and Corrections, Augusta, Maine.

King, Danny. The Fortune Society, New York, New York.

La Poit, Charles F. Sr. Correction Counselor, Great Meadow Correctional Facility, Comstock, New York.

LaVallee, J. Edwin. Superintendent, Clinton Correctional Facility, Dannemora, New York.

McCollum, Sylvia. Director, Educational Rehabilitation Programs, Federal Bureau of Prisons, Washington, D.C.

McGee, Richard A. President, American Justice Institute, Sacramento, California.

Maescher, Mary. Assistant Director, Maine EXIT Program, Palmer Paulson Associates, Inc., Chicago, Illinois.

Miller, Neal. American Bar Association Committee on Correctional Facilities and Services, Washington, D.C.

Murphy, Ward E. Director, Bureau of Corrections, State Department of Mental Health and Corrections, Augusta, Maine.

Nichols, G. Raymond. Director, Division of Probation and Parole, Department of Mental Health and Corrections, Augusta, Maine.

Oberlock, Russell. Industries Manager, Maine State Prison, Thomaston, Maine.

O'Connor, Neil. Supervisor of Vocational Education, Wallkill Correctional Facility, Wallkill, New York.

[illegible]. Deputy Superintendent, Wallkill Correctional Facility, Wallkill, New York.

Parker, David S. Parole Officer, Portland, Maine.

Paschall, William. Chief, Research Group, Special Manpower Problems, U.S. Dept. of Labor, Washington, D.C.

Perlis, Leo. Director, Dept. of Community Services, AFL-CIO, Washington, D.C.

Rivers, Melvin. President, The Fortune Society, New York, New York.

Robbins, Allan. Warden, Maine State Prison, Thomaston, Maine.

Rothenberg, David. Executive Secretary, The Fortune Society, New York, New York.

Shellogg, Fred. Supervisor of General Education, Coxsackie Correctional Facility, West Coxsackie, New York.

Shimberg, Benjamin. Senior Program Director for Vocational-Technical Education Projects, Educational Testing Service, Princeton, New Jersey.

Shreck, Charles. Supervisor of Vocational Education, Green Haven Correctional Facility, Stormville, New York.

Smith, Gordon B. Supervisor of Vocational Education, Coxsackie Correctional Facility, West Coxsackie, New York.

Steinberg, Joseph. Morrow Association, Trenton, New Jersey.

Stolpestad, James A., formerly Special Assistant Attorney General, State of Minnesota, St. Paul.

Swicard, Don. LEAA, Post-Release Administrator, Washington, D.C.

[illegible]horst, Richard. Director, Maine EXIT Program, Palmer/Paulson Associates, Inc., Chicago, Illinois.

Ternullo, Vito. Director of Education, State Department of Correctional Services, Albany, New York.

Throckmorton, William. Manpower Administration, U.S. Dept. of Labor, Washington, D.C.

Tierney, John J. Apprentice Training Section, N.Y. State Dept. of Labor, Albany, New York.

Wagner, Albert. Director, State Dept. of Corrections, Trenton, New Jersey.

Wildstein, Harold S. Director of Classification and Treatment, N.Y.C. Correctional Institution for Men, East Elmhurst, N.Y.

Witt, Leonard. Director of Community Placement, State Department of Correctional Services, Albany, New York.

Wollard, Garland. Deputy Associate Commissioner for Education. U.S. Department of Justice, Bureau of Prisons, Washington, D.C.

Worthington, Robert M. Associate Commissioner, Adult Vocational and Technical Education, U.S. Office of Education, Washington, D.C.

Yellen, Steve N. Supervising Parole Officer, State Department of Correctional Services, Albany, New York.

Zink, Theodore M. Prof., Law/Justice Studies, Glassboro State College, Glassboro, New Jersey.

# SELECTED BIBLIOGRAPHY

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